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THE HISTORY OF

BRITISH INDIA.

BY JAMES MILL, ESQ.

FOURTH EDITION WITH NOTES AND CONTINUATION,

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BOOK VI.

FROM THE ESTABLISHMENT OF THE NEW CONSTITUTION FOR THE GOVERNMENT OF INDIA, IN 1784, TO THE TERMINATION OF THE WAR WITH THE MAHRATTAS, IN 1805.

CHAPTER I.

Administration of Mr. Macpherson. — State of the Government in India, internal, and external.— Board of Control pays, without inquiry, the Debts of the Nabob of Arcot.—Orders the Assignment of the Carnatic Revenues to be given up.—Absorbs the Power of the Directors. —Lord Cornwallis appointed Governor-General.—Commencement of the Proceedings in Parliament relative to the Impeachment of Mr. Hastings.— The best mode of proceeding rejected by the House of Commons.— Articles of Charge against Mr. Hastings.—Three Bills to amend the East India Act. —Proceedings in Parliament relative to the Impeachment of Mr.

Hastings.—Impeachment voted.—Proceedings in Parliament tending to the Impeachment of Sir Elijah Impey.—Motion for Impeachment negatived—Mr. Pitt's declaratory act.

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UPON the departure of Mr. Hastings from Bengal, Mr. Macpherson succeeded, as senior in council, to the power and dignity of Chief Governor of the British establishments in India. Certain peculiarities marked the history of this gentleman in the service of the Company. He sailed to Madras in 1766, purser of an India ship; and having obtained the means of an introduction to the Nabob of Arcot, insinuated himself quickly into his inmost confidence. As the Nabob, since the first moment of his deliverance from the terror of the French, had been in a state of perpetual struggle with the servants of the Company for a larger share of power, Mr. Macpherson appears to have flattered him with the hopes of advantage from an application to the British minister; and to have prevailed upon the Nabob to make use of himself as the organ of the attempt. The project was, to persuade the minister, that the Nabob was suffering under a load of oppression by the Company's servants. Mr. Macpherson arrived in England, in execution of this commission, towards the end of the year 1768. Upon his return to Madras, he was, during the administration of Governor Dupré, admitted into the civil service of the Company, and employed by that Governor in the most confidential transactions; particularly, in writing his despatches, to which the superior skill of Mr. Macpherson in the art of com-

position afforded a recommendation. In the year 1776, Lord Pigot was Governor of Madras. Mr. Macpherson had ascended to the rank of a factor in the Company's service; when a paper, purporting to be a memorial to the Nabob of Arcot, was presented to the Council by their President. It had no signature: but it recapitulated various services, which the writer had rendered to the Nabob in England; and the concurrence of circumstances rendered it but little possible that he should be any other person than Mr. Macpherson. Mr. Macpherson was called before the Board; and asked whether, or not, he acknowledged the production. Mr. Macpherson replied, "That he could not give a precise answer; that it was not written in his hand, nor signed by him; and that it referred to transactions before he was in the Company's service." Lord Pigot regarded this answer as not only evasive, but a satisfactory proof that Mr. Macpherson was the author; and as the transactions appeared to him to be those of a man unfit for the service of the Company, he therefore moved that he should be dismissed. The following is a passage of the memorial: "The object of this commission was to procure relief from the oppressions under which the Nabob was labouring: to procure this wished-for relief, the means to be employed were, if possible, to raise in the breast of the Prime Minister a favourable respect for the Nabob; then to lay before him the distress of the Prince; likewise to show the advantage which would arise to the state, from granting him the proper protection." In describing his first interview with the Minister, the Duke of Grafton, the memorialist

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said, "I expatiated upon the superior merits of the Nabob; showed that he was the person to whom Britain owed the rise of her power in India; that his attachment and unsullied honour to the English were unparalleled. I then dwelt upon his personal merits, as a statesman and a gentleman; and showed, that though he had assurances of protection, under the sovereign hand, he was treated with indignity, and even tyranny." "Having represented," continues the author, "the Nabob's distress, and the oppressions under which he laboured, in the most cautious manner to his Grace, I availed myself of the disputes which subsisted, or were rather commencing, between his Grace, as First Lord of the Treasury, and the India Directors, to enforce the propriety of supporting the Nabob." Another of the topics which he says he always laboured was, "that the firm support of his Highness was the best restraint which government had upon the usurpations of the servants of a certain Company." The memorialist also desires the Nabob to recollect, whether he was not the inventor of the plea, by which the Nabob claimed to be a party to the treaty of Paris; that is, to rank himself with the princes of Europe, as a member of their general system; and to make the King of France an arbiter between him and the English. Beside the general project of relieving the Nabob from oppression, that is, from the necessity of paying his debts, and of yielding anything from the revenues of the country toward its defence, the memorialist claims the merit of having exerted himself in favour of two other favourite designs of the Nabob; that of usurping the seat of the Subah of the

Deccan, and that of disinheriting his elder in favour of his second son. Beside the arguments which the memorialist employed upon the minister, and the publications by which he boasts of having influenced the public mind, he recurred to other instruments of persuasion. He offered presents to the minister, but they were rejected; and then to the minister's secretary, but they were rejected again. His next offer, but under the necessary portion of disguise, was that of a present to the nation: a sum of seventy lacs, or even more, to be given to the minister, on loan for the public service, at an interest of two per cent.

As the memorialist in these transactions appeared distinctly to have lent or sold himself to the Nabob, to act in hostility to the Company, it was decided in the Council, by a majority of nine to two, that Mr. Macpherson should be dismissed from the service. Four of the members, not satisfied with a silent acquiescence in the reasons of the President, add, that "a man of the intriguing disposition which that paper shows Mr. Macpherson to be, is, we think, very unfit to be employed as a servant of the Company; more especially as we believe Mr. Macpherson has been concerned in the intrigues, which the greater part of the Board must be sensible have lately been carried on at the Nabob's Durbar, to the detriment of the Company's service, and which may have impeded the execution of their late orders."

As the Board regarded the evidence against Mr. Macpherson as conclusive, they held it unnecessary to call upon him for a defence. To the Directors, the offence, when it came before them, must have ap-

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peared of a very trivial nature. About the restoration of Mr. Macpherson they seem not to have hesitated. Their only anxiety was to restore him, without submission to the condition (the votes of three-fourths of the Directors and three-fourths of the Proprietors) prescribed by the act. The opinion obtained from the Company's Council was, that though his dismission, pronounced without receiving his defence, was informal, he could not, without submission to the clause of the act, be restored. The council added, " And it is worth considering, if Mr. Macpherson should be restored, whether he is a proper person to be continued in the Company's service: He has, in my opinion, too much connexion with the Nabob of Arcot; and when the Company's interest and Nabob's are opposite, (as they will often happen,) they will greatly disturb a man of honour and integrity." As this opinion appears not to have accorded with the wishes of the leading portion of the Directors, they made an experiment whether a more favourable opinion could not be obtained from another quarter. They consulted the Solicitor-General, Wedderburne, who had sufficient power over technical language to satisfy them completely. He pronounced the dismission of Mr. Macpherson not a dismission; and by consequence, the clause of the act, which regarded dismission, had in this case no application. Mr. Macpherson was immediately restored, In announcing, however, this decree to the Governor and Council of Madras, the letter of the Court of Directors has the following words: " But, as his behaviour was disrespectful to the Board, and, in other particulars,

very reprehensible, we direct that you give him a severe reprimand, and acquaint him that a like conduct will meet with a severer punishment." From the humiliation, however, of such a reprimand, and such a menace, the Court of Directors, who prescribed them, afforded him effectual protection. Though restored to his rank and emoluments in the service, he was allowed to remain in England, till January, 1781, when he was chosen to fill the high office, vacant by the resignation of Mr. Barwell, in the Supreme Council of Bengal. This appointment excited the attention of the Select Committee of the House of Commons, who took it under examination, and deemed it of sufficient importance to make it the subject of their third report. The conduct of Mr. Macpherson, who undertook the office of a secret enemy of the Company, and became the willing and mercenary instrument of designs levelled against his country; the conduct of the Court of Directors in shielding such a man from the punishment awarded for his offence, nay distinguishing him, as if he had been a model of excellence, by a most unusual reward; lifting him up from a low rank in the service, and placing him all at once in nearly the highest and most important office which they had to bestow, the Select Committee condemned in language of the greatest severity. The design of the Nabob to exempt himself from all dependence upon the Company, the Committee represented as early formed, systematically pursued, and pregnant with danger. He endeavoured to negotiate a treaty of neutrality with the French, which would have secured that nation at Pondicherry. He carried on, to the perpetual dis-

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turbance of the Company's government, a perpetual system of intrigue, in pursuance of his plan. Of Mr. Macpherson's construction of the article in the treaty of Paris respecting the guarantee of his independence by France, he was eager to take advantage, and to interpose that nation between himself and the English. "By means of such flattering delusions," say the Committee, "the ambition of the Nabob Mohammed Ali had been, before this invention, as well as ever since, stimulated to desperate designs and enterprises; which have disturbed the peace of India, shaken the lawful government of the Company at Madras, wasted his own revenues, and at length brought the power of Great Britain in that part of the world to the verge of ruin."

A copy of this report was sent out by the Directors to Bengal, where Mr. Macpherson was then performing so important a part in the government of India. It was a call upon him for a defence of his own conduct and of theirs. The apology was written, under date the 30th of March, 1783. It consisted of the following particulars: First, an assertion, that the transactions in which he had been engaged for the Nabob of Arcot, were made fully known to the Company's Governor at Madras, at the time when he entered into the Company's service, and that he had never presented any memorial of those transactions to the Nabob, but what had that Governor's approbation: Secondly, of a display of the meritorious proceedings of the Supreme Government in Bengal, from the time when he became a member of it.[1]

[1] For these facts, see the Third Report of the Select Committee formed in 1781; and Mr. Macpherson's Letter to the Court of Directors, dated

Upon the first part of this apology, it is obvious to remark, that it consisted entirely of his own affirmation of what passed between himself and a man that was dead. Besides, if it was true, it only proved that a certain governor sanctioned a certain conduct; not that such conduct was innocent. The secret concurrence of a governor, if in any thing wrong, was a collusion between two individuals, not the sanction of government. Upon the second part, an observation equally conclusive was, that the plea was foreign to the charge; for surely the acts of the Supreme Council, whether excellent or the reverse, during the time in which Mr. Macpherson had possessed a seat at the Board, were no proof that nearly twenty years before he had not committed an act, which ought to have excluded him from the service.

As Mr. Hastings remained in India, till the passing of Mr. Pitt's bill left no longer any doubt of his recall, Mr. Macpherson had time to rise to seniority in the Council; and by virtue of his station, occupied, when left vacant, the Governor-General's chair.[1]

Calcutta, 30th of March, 1783, printed by order of the House of Commons, among the papers laid before them in 1787.

[1] Thus far, relates not to Mr. Macpherson's administration, which alone is the legitimate subject of the History of India, but to matters of a private and personal nature, which have little or no historical importance. The notice is borrowed, both in language and spirit, from the Third Report of the Select Committee, the whole of which is most unworthily taken up with similar topics. Admitting, that Mr. Macpherson had, twenty years before, and when he owed no fealty to the Company, advocated the claims of the Nabob of Arcot—admitting that he had, whilst yet young in the Company's employment, memorialized the Nabob on the subject of the services he had rendered him, a fact not substantiated—admitting, that he had been precipitately dismissed and informally restored—these were circumstances that could have been swelled into such magnitude, as to have been deemed worthy of special parliamentary investigation, only by secret

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The state of the revenues; the affairs of Oude; and the proceedings of Sindia, the great Mahratta

motives, with which we are imperfectly acquainted, but which we may suspect had their origin in some party virulence, provoked by the share which Mr. Macpherson was known to have taken, both in 1769 and 1777, whilst in England, as a writer on the side of the Government. There is no doubt that the Court of Directors and the public duly appreciated the character of the Report, as it led to no ulterior measures. As, however, the personalities of the Committee have been repeated in the text, it is advisable to offer some corrections of them by a statement of the facts. Mr. Macpherson went out to India, nominally, as Purser of the Mansfield Chinaman, commanded by his uncle, Captain Macleod. He was the son of the Rev. Dr. Macpherson, of Sleat, in the Isle of Skye, and received a classical education, first at Aberdeen, and afterwards at Edinburgh, where he was the favourite pupil of Professor Fergusson, and became the tutor of the sons of the Earl of Warwick. He left England in March, 1767. The ship touched at Madras, and Mr. Macpherson, having been introduced to the Nabob of Arcot, speedily acquired so much consideration with him, that he engaged the young man to return to England as his agent, with letters addressed to the Minister: with these he arrived in November, 1768, and presented his despatches to the Duke of Grafton. Whatever may be the truth of the assertions of the memorial, that bribes were offered to the Minister and his Secretary, it is very certain that nothing in Mr. Macpherson's conduct was offensive to either, as it was solely by the Duke's interest that a writership was obtained for him. Mr. Macpherson remained in England till the beginning of 1770; he then sailed to Madras with an appointment in the service, to which, therefore, he was not "admitted by Mr. Dupré." In 1774 he was paymaster to the army. In 1776 he was dismissed. We have seen the violence of the disputes which enlisted the whole of the Madras community as partisans, either of the Governor or the Nabob. Mr. Macpherson had no doubt been flattered by the notice and confidence of the latter; he felt grateful to him as indirectly the cause of his success in life, and he entertained to the last a strong impression of the validity of the Nabob's pretensions to regal independence and power, and of his being treated with indignity and injustice. His expression of these sentiments was no doubt the real cause of Lord Pigot's animosity, and of his removal from the service. Mr. Macpherson returned to England in 1777, and was again the bearer of communications from the Nabob of Arcot, including his 'Will,' in which the King was nominated his executor and the guardian of his family, trusts which were accepted by His Majesty. He was also charged with an account of secret overtures made by France to the Nabob, soliciting his alliance and co-operation, and promising to assist him in recovering Tanjore; information which enabled the English authorities in India to prepare for the war with France that ensued; and under secret orders from the Chairman, and Deputy, and

chief, occupied first the attention of the new administration.

The state in which Mr. Macpherson received the government, he represents as far from happy and prosperous. In a statement, bearing date the 4th of March, 1785, "The public distress," he says "was never so pressing as in this moment. The season of the heavy collections is over; the demands of Madras and Bombay are most pressing; and our arrears to the army are upwards of fifty lacs."[1] To the Court of Directors, when rendering an account of his government, upon the intimation of his recall, he represents himself, as having been called upon, "to act as their

President of the Board of Control, which the Secretary of State would not sign, to effect the capture of Pondicherry. The readiness with which the Nabob imparted the temptations offered him, displayed none of that disposition to engage in desperate designs against the British power, with which he is charged by the Report, as a consequence of Mr. Macpherson's flattering delusions. These communications, and the support he gave to Lord North's administration, both by his pen, and in parliament, in which he represented Cricklade, no doubt recommended him to the friendship of the minister, and led to his nomination to a seat in Council at Bengal. The Directors in concurring in his appointment, must have felt secure that they had little reason to apprehend his giving countenauce to the Nabob, in opposition to the interests of the Company, and more probably anticipated, from his personal influence, the confirmation of the Nabob's purpose in a continued rejection of any intercourse with France. These particulars are derived from private correspondence, and various printed documents, viz.—"Letter to Sir J. Macpherson from J. Robinson, Esq., Secretary to Lord North, dated May, 1800." "Letter from Sir J. M. to the Hon. W. Elphinstone, Chairman of the Court of Directors, August, 1804." "Letter from the same to Whitshead Keene, Esq., M. P., May, 1806;" and from a quarto volume printed by his friends in 1808, entitled, "Case of Sir John Macpherson, &c.," the statements of which are verified by extracts from the Correspondeuce between the Governments of India and the Court of Directors. See also a notice of Sir John Macpherson in Wraxall's Posthumous Memoirs, vol. i. p. .—W.

[1] Letter to Major Palmer, printed among extracts from papers in No. 2, vol. vii., presented to the House of Commons on the 13th of March, 1786.

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Governor-General, at a season of peculiar difficulty, when the close of a ruinous war, and the relaxed habits of their service, had left all their armies in arrear, and their presidencies in disorder."[1] The loose language, in which the Indian Governors indulge, makes it impossible to know very exactly what Mr. Macpherson indicated, by the term "relaxed habits" of the service; undoubtedly, however, he meant bad government; since he described them as among the causes of some of the worst effects,—armies all in arrear—and presidencies all in disorder.

The Governor-General and Council stood pledged to Mr. Hastings for the maintenance of his new system for the management of Oude. To reduce, however, the drain upon the Nabob's treasury, produced by allowances and gratuities to the Company's servants, a rule was introduced, that every thing of this nature should appear upon the face of his accounts, should be recorded by the Council, and transmitted for the inspection of the Court of Directors. A body of troops had been assigned by the Nabob to Mr.

[1] Copy of a Letter to the Court of Directors, dated 10th of August, 1786, printed by order of the House of Commons.—The Select Committee of the House of Commons in 1810, in their Third Report, p. 370, say, "The effects of the war which ended in the year 1783, were particularly prejudicial to the financial system of India. The revenues had been absorbed, the pay and allowances of both the civil and military branches of the service were greatly in arrear; the credit of the Company was extremely depressed: and, added to all, the whole system had fallen into such irregularity and confusion, that the real state of affairs could not be *ascertained* till the conclusion of the year 1785-6." Such is the state, in which India was left, by the administration of Mr. Hastings.—M. Such were the inevitable consequences of the ruinous wars engaged in by the Presidencies of Bombay and Madras. That the mischief was not incurable, was the merit of Hastings's administration.—W.

Hastings, as a body guard, during his residence in Oude; and to these troops had been appointed British officers at the Nabob's expense. This too was a burden upon the Nabob which the Governor-General deemed it improper any longer to impose. The expense, however, of Major Palmer, the private agent of Mr. Hastings, left at the seat of the Nabob when the ostensible resident was withdrawn, he was induced "from motives (he says) of delicacy to the late Governor-General, and his arrangements in the upper provinces," not immediately to remove; though the expense was enormous,[1] and the agent employed for no other function that to transmit to the Presidency the letters of the Vizir and present those addressed to him by the Governor-General. The Futty-gur detachment, from the changes which had taken place on the frontiers of Oude, it was also, for the present, deemed unsafe to withdraw. But the Governor-General declared his resolution of confining the military burden imposed upon the Vizir to the smallest amount, consistent with the security of his dominions; and for this he conceived that one complete brigade, in constant readiness, and punctually paid, would suffice.[2]

[1] In all 112,950*l.* of which 22,800*l.* was in salary to Major Palmer alone. The expense of the residency, under Mr. Bristow, which Mr. Hastings had represented as frightfully enormous, amounted to 64,202*l.* See Burke's Charges, No. 16, sect. 89.

[2] See the letter to Major Palmer, quoted in the preceding page.—M. The portion of the text that follows, and which relates to Sindia, belongs almost entirely to the administration of Hastings, and not to that of his successor; of whose measures, therefore, scarcely any account is given. With regard to Sindia, the only important transaction that took place with him, was his demand on behalf of Shah Aulum of the tribute due to the Mogul to the amount of four millions sterling: the demand was civilly,

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The proceedings of Sindia were already an object of great jealousy, if not of dread. In 1781, Mr.

but peremptorily resisted by Sir John Macpherson's government, not, as might be supposed from the loose manner in which it is alluded to in the text, by that of Hastings. The leading feature of Sir John Macpherson's administration, however, was the eminent success which attended his efforts to reduce public expenditure, and re-establish public credit. In a minute in the Secret Department, dated 15th December, 1785, it is stated, that a comparison of the receipts and disbursements of the year ending 30th April, 1786, exhibited a deficit of about 1,300,000*l.* The arrears due to the armies of the three Presidencies were about two millions. The ascertained Bengal debt alone was about four millions sterling. The troops at Madras and Bombay were in a state of utter destitution, and some of them in open mutiny, from the great amount of their arrears. In this situation, the government of Bengal declared itself responsible for the debts of the three Presidencies. All remittances of cash from the Collectors' Treasuries, were prohibited, until the arrears of troops within or near their districts had been discharged. All civil servants, civil surgeons, and uncovenanted servants drawing more than 300 rupees per month, were to be paid their salaries and all their arrears, with certificates bearing interest at 8 per cent. per annum, until cashed. All issues of paper on account of the Company, except the Company's bonds, were ordered to be registered, the registry was to be published, and the paper was to be paid off in the order of its issue. The cash accumulating in the Treasuries, was to form a fund, by which the certificates and other paper were dischargeable, and under these arrangements the Governor-General and Council publicly expressed their expectations, that "all the paper in currency at the end of 1785, would be paid off in the course of twelve months, through funds derivable from the amount of the reductions made in the established charges of the government, aided by the effects of these regulations, and the additional resources to be derived from the Upper Provinces." These measures were made known to the public by advertisement in the Official Calcutta Gazette, 29th December, 1785, and 15th January, 1786. The orders were followed up by subsidiary arrangements, which completely altered the aspect of affairs. "Every man in the settlement," observes a competent authority on the spot, "witnessed the magical effects of this measure. It operated like a charm in restoring public confidence, which once secured, this moving fund acquired life and activity. At no remote period from the commencement of the plan, Treasury Certificates could raise cash in the market at a discount less than the legal interest of the money. I shall ever bear grateful testimony of the salutary relief from ruin, which the measure afforded to me, and to every trader in the settlement." Prinsep's Proposal of a Substitute for Funding, 1797. In a letter to the Governor of Madras from the Governor-General, dated 20th May, 1786, he writes, "In our reductions of expense, which have been

Hastings, apparently engrossed by one object, the accomplishment of peace with Sindia, and through him with the government at Poonah, overlooked or misunderstood the dangers which were involved in the aggrandizement of the Mahratta chief, and expressly instructed the English ambassador to throw no obstacles in the way of the designs which he entertained against the remaining territories of the Mogul. Toward the end of the year 1782, died Nujuf Khan, whose talents had, even in its present decline, given a portion of stability to the imperial throne. The remaining chiefs by whom it was surrounded immediately broke into general discord. In the petty, but virulent warfare, in which they engaged, the unhappy Emperor was bandied from one to another, according as each, attaining a precarious ascendency, became master of his person; and he was equally enslaved, and oppressed by them all. About six months after the death of Nujuf Khan, Mr. Hastings, though he had directed Colonel Muir, not to insert any thing in the treaty with Sindia "which might expressly mark our knowledge of his views, or concurrence in them," namely, his views on the territory of Shah Aulum; and though he had on that occasion declared, that "our connexion with the Mogul had long been suspended, and he wished

very great, (125 lacs,) 1,250,000*l.*, I shall have cold praise and a thousand secret enemies." He received, however, in November, 1786, the unanimous thanks of the Court of Directors, for his able administration of the affairs of India, and was raised by His Majesty to the dignity of a baronet. It was during the government of Sir John Macpherson, that by an amicable arrangement with the King of Queda, the valuable settlement of Penang, or Prince of Wales' Island, was added to the Company's Eastern possessions.—W.

BOOK VI CHAP. 1. 1785. never to see it renewed, as it had proved a fatal drain to the wealth of Bengal, and the treasury of the Company," sent certain agents, among whom were Major Browne, and Major Davy, to the court of the Emperor at Delhi; and, by means of them, entered into negotiations, if not engagements, of which the nature has never been satisfactorily explained. It appears, that an offer was made, on conditions which were accepted, to provide for the expense of any troops which the King might require; and Major Browne, in his despatch to Mr. Hastings laid before the Board, declared, that "The business of assisting the Shah can and must go on, if we wish to be secure in India, or regarded as a nation of faith and honour."[1] The proposition, however, which was made by the Governor-General, to grant assistance to the Mogul, was disrelished by the other members of the Board; and the scheme was defeated. At what mark it was aimed, we no where distinctly perceive.[2] "I avow," says Mr. Hastings, "that I would have afforded effectual assistance to the Mogul, that is, to the King Shah Aulum, if powers had been granted to me; but my Council differed in opinion with me, and nothing was done." This is all the information which, in his answer to the charge on

[1] Letter from Major Brown to Mr. Hastings, dated at Delhi, 30th December, 1783.

[2] The papers on this subject were refused by the ministry, or rather by the House of Commons, under the guidance of the minister. See the Debates in Parliament, under date March 6th and 17th, 1786.—M. At the same time it is evident from the 18th charge, presented to the House on the 26th of the following April, that Burke was in possession of the papers. The debates were therefore merely on a question of form.—W.

this subject, Mr. Hastings condescends to yield. When urging upon the Directors his wishes for sending troops to the assistance of the Mogul, he had indeed held a language, contradictory both to his former and his subsequent declarations. If the King's authority, he said, "is suffered to receive its final extinction, it is impossible to foresee what power may arise out of its ruins, or what events may be linked in the same chain of revolution with it. But your interests *may* suffer by it; your reputation certainly *will*—as his right to our assistance has been constantly acknowledged—and, by a train of consequences to which our government has not intentionally given birth, but most especially by the movements, which its influence, by too near an approach, has excited, it has unfortunately become the efficient instrument of a great portion of the King's present distresses and dangers." Mr. Burke, however, affirms, with a strength which the circumstances will not warrant, that the pretended design of Mr. Hastings to free the Emperor from thraldom under the Delhi chiefs, was not his real design, because not consistent with some of his declarations, and some of his acts. While Mr. Hastings was at Lucknow, in 1784, the eldest son, and heir apparent of the Emperor, repaired to Oude, to solicit the protection of the Governor-General and Nabob. He was received with marks of distinction, which had no tendency to extinguish hope, and was described by Mr. Hastings as a person of considerable qualifications, well versed in affairs. His solicitations for aid to deliver his father from oppression, and re-establish in some degree the fortunes of his house, Mr. Hast-

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ings informed him, were opposed, by the present temper of the English nation, as well as by that of his colleagues in the government; and he advised an intermediate application to Sindia, as the most powerful Mahratta Prince, the ally of the English nation, and a man who, unless early prevented, was likely to take an opposite part. To Sindia, Mr. Hastings, as he informed the Court of Directors, had himself written, on the very first advice he received of the flight of the Mogul Prince, not only to apprize him of that event, but to solicit his advice. Sindia immediately sent to Lucknow his familiar and confidential ministers, with whom Mr. Hastings held several secret conferences, without the presence even of a secretary. He reported no more than the result of these conferences; namely, "that the inclinations of the Mahratta chief were not very dissimilar from his own;" and he added, that neither in this, nor in any other instance, would he suffer himself to be drawn into measures which should tend to weaken the connexion between the English government and Sindia; "nor, in this, even to oppose his inclinations." What his inclinations were, at the time of the negotiation with Colonel Muir, the reader will remember: What were the recent declarations of Mr. Hastings, respecting the obligations both of justice and of policy, to support the Emperor, has been immediately stated: What were the inclinations of Sindia at the present moment, Mr. Hastings is far from disclosing: The actions of Sindia made them soon distinctly appear.[1] The Emperor, from

[1] The insinuations of Mr. Burke that the negotiation of the Governor-General with the Mogul covered an insidious design to betray him into

the impulse of a feeble mind, which deems any evil less than that under which it is immediately suffering,

the hands of Sindia, receives its greatest confirmation from what Mr. Pitt was brought to say in the House of Commons, on the 18th of March, 1786, in the debate on the production of Delhi papers. "If he were inclined to lay open secrets which the interests of the country required should be concealed, he could easily prove," he said, "that the junction of the Mogul with the Mahratta powers was of the highest advanvantage to the Company." Two other objects, which were always found an efficient source of terror, as terror is always, in such hands, a most convenient instrument of persuasion, were, on this occasion, brought forward by the minister. These were, Tippoo Saib, and the French. These two, he said, were, at that time, plotting against the Company; and Tippoo was making efforts, by holding out dazzling projects to the Mogul, to realize the great advantage of the imperial authority and name. "In order to counteract this," said Mr. Pitt, "it became neccssary for the servants of the Company to exert themselves to the utmost to ingratiate themselves with the Court of Delhi, and by that means secure to their employers that great body of strength and influence which would naturally result from the countenance of the Shah." Ibid. It was a "body of strength and influence," on which Mr. Hastings set a high value, in his instructions for a negotiation with Sindia!—M. The insinuation of Burke was founded solely upon his malevolence towards Hastings, and was, as he well knew, contradicted by the instructions given by Hastings to Major Browne, for he had those instructions before him when he framed his charge, every syllable of which they falsified. He gets rid of this difficulty by asserting, that either Hastings entered upon the Bengal Consultation of the 5th (it should be the 6th) October, 1783, a false paper as the true, or that he gave to Major Browne other secret instructions, totally different from, and even opposite to, his public instructions. Now of these two alternatives, the first is easily disposed of. On the Consultations of thc 3rd March, 1783, the appointment of Major Browne is adverted to, and the Governor-General affirms, that the instructions furnished him had been given with the knowledge and approbation of the Council. The other members of Council present do not deny this affirmation, and their acquiescence in it proves that it was the truth. The instructions, when finally entered, are described as those formerly alluded to. Of the members present on the 6th of October, two, Messrs. Macpherson and Stables, were present on the 3rd of March. They must have known whether the instructions were the same as those which they had formerly sanctioned, and if the document was false, must have connived at the substitution—a connivance with which they were never charged, and of which it is not probable that they could have been guilty. The second insinuation is also disproved by the whole course of the proceedings, which were throughout in harmony with the instructions given to Major Browne. These were of a general nature, and were designed to

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listened to the insidious overtures of Sindia, who offered him deliverance from the undutiful servants

assure Shah Alem of a disposition, sincerely entertained by Hastings certainly, and possibly by the Council, to support the Emperor against the factious nobles of his court, who contended with each other for his person and authority, and had reduced him to the lowest pitch of degradation and distress. The agent, however, was most particularly cautioned against committing the government by any positive engagement, as they wisely desired, before entering into any agreement, to ascertain the real state of parties at Delhi, and the character and the resources of the Emperor. The question was, however, decided before Major Browne reached Delhi. After the death of Nujuf Khan, the scenes of anarchy and violence that ensued, and the indignity with which he was treated, made Shah Alem turn anxiously towards the English for succour, and repeated letters arrived from him in the early part of 1783, praying for military aid. Hastings was inclined to give it, but all the other members at the consultation above referred to, that of the 3rd of March, determined, that it did not appear immediately advisable to send any forces to the assistance of the King, which might involve the British government in fresh troubles. It was subsequently to this, that Major Browne arrived at Delhi, and very excusably compassionating the wretchedness of the Emperor, urged that prompt and effective aid should be at once afforded. He expresses himself as if a treaty had been set on foot, and articles proposed and accepted; but at the date of his letter, the 30th December, 1783, he had not been presented to the King; and the chief ministers, lately elevated by violence and murder to their stations, were not likely to have entered into any treaty which was to liberate Shah Alem from their control. Early in 1784, Hastings went to Lucknow; while there, Prince Juwan Bukht, son of Shah Alem, fled from Delhi, from the insolence of Afrasiab Khan, and sought protection from the Vizir. Major Browne continued to recommend that military assistance should be given to the Mogul, but now Hastings himself, although retaining the same sentiments towards the Emperor, was satisfied that the support of him by arms, was no longer advisable. An extract from the Public Letter of the Bengal Government to the Court of Directors, 5th July, 1784, will show the soundness of his views, and the utter baselessness of the charges against him. "In a second letter of the same date (22nd April) the Governor-General transmitted to us several letters which he had received from Major Browne at Delhi, strongly recommending an alliance with his Majesty Shah Alem, together with the plan of a treaty to be entered into, as *proposed to him* by Afrasiab Khan; but the Governor-General acquainted us at the same time, that he had given no encouragement to Afrasiab Khan's expectations. The reasons urged by Major Browne in favour of this alliance, are the supposed intrigues carrying on at the Court of Delhi, by Mahdajee Sindia, unfavourable to the interests of the Company, and the danger of the King's throwing himself upon the Seiks for assist-

that enthralled him. Partly by intrigue, and partly by force, Sindia got possession easily of the imperial

ance and protection, in case of our refusing to afford him aid in the present distracted situation of his affairs. On the other hand, the Governor-General stated to us such arguments as appeared to militate against the proposed alliance. These were the dangers of couverting Sindia into an enemy, by thwarting his views, *(if he had any,)* at the Court of Delhi. The probability that the account of his intrigues at that Court was fabricated by Afrasiab Khan, to suit an interested purpose—the impolicy of giving way to hasty suspicions, and the change in his Majesty's situation since the month of October last, when he deemed such an interference on our part expedient, his dominions having been since that period harassed by intestine commotions, and his resources exhausted by the calamities incident to such a situation." The Council concurred entirely in these views, and unanimously determined to exhort the Governor-General to avoid most sedulously and cautiously committing the Company, either as to their arms or treasure, in his correspondence with the King. A subsequent letter from Hastings to the Court of Directors, dated the 16th June, details all that had occurred; and although it still shows a leaning to the policy of interfering in behalf of the unhappy old King, expresses a determination to adhere to the instructions of the Court, and the sentiments of his colleagues. Anticipating now, what he before evidently hesitated to believe, the intention of Sindia to interpose, he, consistently with his instructions to Colonel Muir, remarks:—"I consider the alliance of Mahdajee Sindia, as of such importance to your political interests, that you may rest assured, that neither in this nor any other instance will I suffer myself to be drawn into any measures which shall tend to weaken this connexion." He proceeds to say, that he believes the intentions of Sindia are not very different from his own wishes, aud that he seeks to vindicate the authority, and protect the life of Shah Alem. Shortly after this, Sindia avowed his purpose of taking a part in the political agitations of Delhi, professedly in favour of the Emperor; and there was no longer any occasion, nor would it have been compatible with the declared policy of the Government of Bengal, to interfere. From all this the inferences are palpable. Hastings would have stepped forward as the protector of Shah Alem, had the character and resources of that prince encouraged him to do so, and had the resources at his own command permitted his so doing with safety; but when he was fully aware of the state of affairs at Delhi, and that whatever was to be done, must have beeu effected wholly at the Company's expense—an expense to which their finances were inadequate, as the war with Tippoo still continued, he relinquished the enterprise—a determination confirmed by the appearance of Sindia on the scene of action, to whom he considered it of vital importance to avoid giving offence. There was nothing in this conduct that merited censure; he throughout kept a prudent restraint upon a generous impulse, and ultimately sacrificed it to more emergent considerations.

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person, and with the imperial person, of all the pretensions, and all the territories, which belonged to the imperial throne. Nor was it long before he manifested the value of that friendship of his to the English, which Mr. Hastings claimed so much of merit for maintaining. Mr. Hastings had not yet left Calcutta, when a body of the Seiks invaded Rohilcund; and it was on strong grounds believed, that they received encouragement from Sindia to the attempt. That ambitious chief proceeded in his plans with so much expedition, that before the end of March he was master of Agra; and the fort of Ally Ghur, which could not long be defended, remained, in that part of India, the only place of strength, beyond the confines of the Vizir, which was not in his power. He afforded protection to Cheyte Sing, and gave him a command in his army. He had already treated the Vizir with so little delicacy, that nothing but the prospect of effectual resistance, as Major Palmer and Mr. Anderson united in representing, could be expected to restrain him within the bounds of justice.[1] What was more, he compelled the Emperor to declare him Vicegerent to the Mogul empire, an authority which superseded that of the Vizir; and consolidated in the hands of the Mahrattas all the legal sovereignty of India. These advantages he failed not to direct immediately

Neither was there any cause to regret the predominance of Sindia's authority established at this period at the Court of Delhi. Whilst it lasted, it was much more favourable to the comfort, and even the dignity, of Shah Alem, than the power of any of the miltary adventurers, who in the usurped character of servants, had been cruel and tyrannical masters over their sovereign. MS. Records. See also Francklin's Shah Aulum.—W.

[1] Extracts from Papers in No. 2, vol. vii. ut supra.

against the Company themselves; and incited the Mogul to make a demand of the tribute due to him from the English. On the charge, however, of having connived with the designs of Sindia, Mr. Hastings has the following words, "I declare, that I entered into no negotiations with Madajee Sindia for delivering the Mogul into the hands of the Mahrattas: but I must have been a madman indeed, if I had involved the Company in a war with the Mahrattas, because the Mogul, as his last resource, had thrown himself under the protection of Madajee Sindia."[1] The question is, whether he did not more surely prepare a war with the Mahrattas, by allowing Sindia to feed his presumption and his power, with all the resources and pretensions of the imperial throne.

The power of Sindia over the Mogul family was not complete, so long as the eldest son of the Emperor remained out of his hands. Towards the end of March a negotiation was opened with him by Sindia, of which the object was his return to Delhi. The conditions offered were extremely favourable. "This convinced me," said Major Palmer, "they were insidious; and I earnestly recommended that the Prince should not trust to promises; as, without security for their performance, he would expose his dignity, his succession, and even his life, to the greatest hazard." Major Palmer continues, "I consider the interests of the Company, and the Vizir, as deeply involved in the fate of the Prince. Whilst he continues under the protection of the Vizir and the Company, the usurpation of the

[1] Mr. Hastings's Answer to the Nineteenth, Eighteenth, and Seventeenth Articles of Charge.

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Mahrattas must be incomplete; but, if he should fall under their power, it will be perpetuated, and the consequences of their being permanently established in the authority of the empire, would be truly alarming to the peace of the Vizir's, and the Company's dominions." The Major added, "It will not only be impracticable to withdraw the Futty Ghur detachment, in the event of Sindia's obtaining a firm footing in the Dooab, which is his aim, and which he has nearly accomplished; but it will also be necessary for the Vizir to maintain a respectable body of cavalry to act with the Company's infantry for the protection of his dominions. And his Excellency is so seriously alarmed at the growing power of the Mahrattas in his neighbourhood, that I am convinced he will readily adopt any practicable plan for securing himself against the consequences of it."[1]

The Board of Control, at the head of which was placed Mr. Henry Dundas, had not been long in the exercise of its functions, when it manifested pretty

[1] Letters from the agent in Oude, dated Lucknow, 1st April, 1785; Extracts from Papers, ut supra.—M.

The vicissitudes of the different parties disputing for the last fragments of the Mogul empire, were so sudden and incessant, that they baffled the keenest political foresight. Sindia, after holding the power of prime minister for two years, was expelled from his office by a new combination of the Mogul chiefs. His army was defeated, and he himself obliged to fly to his own dominions. He was succeeded by various nobles, amongst whom was the infamous Gholam Kadir, by whom Shah Alem was deposed and blinded. This outrage brought Sindia again to Delhi, but the consolidated power of the British rendered him less formidable than he had been. The Prince Juwan Bukht, after several vain attempts to engage the Nawab Vizir and the British Government to aid him, and after one unsuccessful effort in 1787, to re-establish himself at Delhi by force of arms, returned to Delhi, and died suddenly in 1788. Francklin's Shah Aulum, 159.—W.

clearly the ends which it was calculated to promote.

So strong a conviction was impressed upon Englishmen, in general, of the evil resulting from the magnitude of the debts due to British subjects by the Nabob of the Carnatic; of the fraudulent methods by which they had been contracted; and of the mischievous purposes which the Nabob pursued, by acknowledging debts, where nothing had been received, and nothing but a dangerous co-operation was expected in return; that, in every one of the schemes which the late reformers had proposed for the government of India, a provision had been included, for an adjustment of those enormous and suspicious contracts. In Mr. Dundas's bill it was proposed, that the Governor-General and Council "should take into consideration the present state of the affairs of the Nabob of Arcot, and inquire into and ascertain, the origin, nature, and amount of his just debts," and take the most speedy and effectual measures for discharging them. A provision to the same effect, and couched very nearly in the self-same words, was contained in Mr. Fox's bill; and to prevent the recurrence of a like evil in future, it was declared "unlawful for any servant, civil or military, of the Company, to be engaged in the borrowing or lending of any money, or in any money transaction whatsoever, with any protected or other native prince." The clause in Mr. Pitt's act was in the following words: "Whereas very large sums of money are claimed to be due to British subjects by the Nabob of Arcot, ... be it enacted, That the Court of Directors shall, as soon as may be, take

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into consideration, the origin and justice of the said demands; and that they shall give such orders to their Presidencies and servants abroad for completing the investigation thereof, as the nature of the case shall require; and for establishing, in concert with the Nabob, such fund, for the discharge of those debts which shall appear to be justly due, as shall appear consistent with the rights of the Company, the security of the creditors, and the honour and dignity of the said Nabob."

The Directors, from the words of this enactment, concluded, as anybody would conclude, that this inquiry, respecting these alleged debts, was a trust, expressly and exclusively devolved upon them; and that an inquiry into "the origin and justice of the said demands" implied (what was absolutely necessary to the end which seemed to be proposed, the separation of the false from the true) that scrutiny should be made into each particular case. They proceeded to the fulfilment of the obligations, which this enactment seemed to lay upon them; drew up a set of instructions for their Presidencies and servants abroad; and transmitted them for approbation to the Board of Control.

They were not a little surprised to find the Board of Control take the whole business out of their hands. The Board of Control thought proper to divide the debts of the Nabob into three classes; 1. A class consolidated, as it was called, in the year 1767, constituting what it called the loan of 1767; 2. A class contracted for paying the arrears of certain cavalry discharged in 1777, which it called the cavalry loan; 3. Another class, which it called

the consolidated debt of 1777.[1] And it ordered, that all these three classes should be discharged, without any inquiry.

As it was only by degrees that funds for that discharge could arise; and twelve lacs annually were set apart for that purpose; the following order was prescribed: That the debt consolidated in 1767 be made up to the end of the year 1784 with the current interest at ten per cent.; the cavalry loan made up[2] to the same period with the current interest at twelve per cent.; the debt consolidated in 1777 made up to the same period with the current interest at twelve per cent. to November, 1781, and from thence with the current interest at six per cent.: That the annual twelve lacs should be applied; 1. To the growing interest on the cavalry loan at twelve per cent.; 2. To the growing interest on the debt of 1777 at six per cent.; 3. Of the remainder, one-half to the payment of the growing interest, and liquidation of the principal of the loan of 1767, the other half to the liquidation of the debt which the Nabob, beside his debt to individuals, owed to the Company: That when the loan of 1767 should thus be discharged, the twelve lacs should be applied; 1. To the growing interest of the loan of 1777; 2. Of the remainder, one-half to pay the interest and liquidate the principal of the cavalry loan, the other half to the liqudation of the debt to the Company: That when the cavalry loan should thus be discharged, the

[1] This classification seems to have been adopted from a pamphlet entitled "A clear and candid exposition of the origin, progress, and state of the several loans made to Mohammed Ally Khan, from 1760 to 1777."—W.

[2] "*Made up*," means augmented by the addition of interest due.

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twelve lacs should be applied, in the proportion of five lacs to the interest and principal of the loan of 1777, seven lacs to the debt due to the Company: and lastly, when the debt to the Company should thus be discharged, that the whole of the twelve lacs should go to the extinction of the debt of 1777.

The Directors remonstrated, but very humbly. "My Lords and Gentlemen, It is with extreme concern that we express a difference of opinion with your Right Honourable Board, in this early exercise of your controlling power; but, in so novel an institution it can scarce be thought extraordinary, if the exact boundaries of our respective functions and duties should not at once, on either side, be precisely and familiarly understood, and therefore confide in your justice and candour for believing that we have no wish to evade or frustrate the salutary purposes of your institution, as we on our part are thoroughly satisfied that you have no wish to encroach on the legal powers of the East India Company; we shall proceed to state our objections to such of the amendments as appear to us to be either insufficient, inexpedient, or unwarranted." And under the head of, private debts of the Nabob of Arcot, "You are pleased," they say, "to substantiate at once the justice of all those demands which the act requires us to investigate." After "submitting," which is all that they presume to do, "to the consideration" of the Board, whether "the express direction of the act, to examine the nature and origin of the debts," had thus been "complied with;" and likewise "submitting," whether inquiry could have done any harm; they add, "But to your appropriation of the fund, our duty

requires that we should state our strongest dissent. Our right to be paid the arrears of those expenses by which, almost to our own ruin, we have preserved the country, and all the property connected with it, from falling a prey to a foreign conqueror, surely stands paramount to all claims, for former debts, upon the revenues of a country so preserved, even if the legislature had not expressly limited the assistance to be given to private creditors to be such as should be consistent with our rights. The Nabob had, long before passing the act, by treaty with our Bengal government, agreed to pay us seven lacs of pagodas, as part of the twelve lacs, in liquidation of those arrears; of which seven lacs the arrangement you have been pleased to lay down would take away from us more than the half and give it to private creditors, of whose demands there are only about a sixth part which do not stand in a predicament that you declare would not entitle them to any aid or protection from us in the recovery thereof, were it not upon grounds of expediency. Until our debt shall be discharged, we can by no means consent to give up any part of the seven lacs to the private creditors."[1]

The correspondence upon this subject between the Court of Directors and the Board of Control passed during the months of October and November in the year 1784. The Board of Control persisted in the plan which it had originally adopted. And on the 28th of February, 1785, it was moved by Mr. Fox, in the House of Commons, that the directions which

[1] Beside the Parliamentary Papers, these documents are found in the Appendix to Burke's speech on the Nabob of Arcot's Debts.

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had in consequence been transmitted to India, should be laid before the House. A vehement debate ensued, in which Mr. Burke delivered that celebrated speech, which he afterwards published, under the title of "Mr. Burke's Speech on the Motion made for Papers relative to the Directions for charging the Nabob of Arcot's Private Debts to Europeans on the Revenues of the Carnatic." Mr. Dundas defended the Board of Control: By showing that, whatever might be the natural and obvious meaning of the words of the legislature commanding inquiry, and committing that inquiry to the Court of Directors; it was yet very possible for the strong party to torture them into a meaning, which enabled the strong party to do what it pleased: By asserting that the Directors had sufficient materials in the India House, for deciding upon all three classes of debts; though the opinion of the Directors themselves was precisely the reverse: By observing, that, if any improper claim under any of the three classes was preferred, it was open to the Nabob, to the Company, and to the other creditors, to object. The only object, which, as far as can be gathered from the report of his speech, he held forth as about to be gained, by superseding that inquiry, which all men, but himself and his majority in parliament, would have concluded to be the command of the legislature, was, that this measure would not leave "the Nabob an opportunity to plead in excuse for not keeping his payments to the Company, that he was harassed by the applications of his private creditors."[1]

[1] How wretched his foresight, if he really was sincere in this opinion, and how little he was capable of calculating the effects of his own mea-

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Mr. Burke took a very extensive view of the Indian policy of the ministers. The most curious and important part of his speech; and that is important indeed; is the part, where he undertakes to show what was the real motive, for superseding that inquiry which was called for by the legislature, and for deciding at once, and in the lump, upon a large amount of suspicious and more than suspicious demands. The motive, which he affirms, and in support of which he adduces as great a body of proof as it is almost ever possible to bring, to a fact of such a description (facts of that description, though of the highest order of importance, are too apt to exhibit few of those marks which are commonly relied upon as matter of evidence), was no other than that baneful source of all our misgovernment, and almost all our misery, *Parliamentary Influence.* It was to hold the corrupt benefit of a large parliamentary interest, created by the creditors and creatures, fraudulent and not fraudulent, of the Nabob of Arcot, that, according to Mr. Burke, the ministry of 1784 decided they should all, whether fraudulent or not fraudulent, receive their demands. "Paul Benfield is the grand

sures, soon appeared by the event. "The actual loss," says Mr. Hume, "by this proceeding of the Board of Control is not limited to the large sum which has been paid: for the knowledge of the fact, that Mr. Dundas had in that manner admitted, without any kind of inquiry, the whole claims of the consolidated debt of 1777, served as a strong inducement to others, to get from the Nabob obligations or bonds of any description, in hopes that some future good-natured President of the Board of Control would do the same for them. We accordingly find that an enormous debt of near thirty millions sterling was very soon formed after that act of Mr. Dundas, and urgent applications were soon again made to have the claims paid in the same manner." Speech of Joseph Hume, Esq. at a general Court of Proprietors at the East India House, on the 9th of June, 1814, p. 23.

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parliamentary reformer. What region in the empire, what city, what borough, what county, what tribunal in this kingdom, is not full of his labours. In order to station a steady phalanx for all future reforms, this public-spirited usurer, amidst his charitable toils for the relief of India, did not forget the poor rotten constitution of his native country. For her, he did not disdain to stoop to the trade of a wholesale upholsterer for this house, to furnish it, not with the faded tapestry figures of antiquated merit, such as decorate, and may reproach, some other houses, but with real solid, living patterns of true modern virtue. Paul Benfield made (reckoning himself) no fewer than eight members in the *last* parliament. What copious streams of pure blood must he not have transfused into the veins of *the present!*"

But the occasions of Mr. Benfield had called him to India. "It was therefore," continues Mr. Burke, "not possible for the minister to consult personally with this great man. What then was he to do? Through a sagacity that never failed him in these pursuits, he found out in Mr. Benfield's representative his exact resemblance. A specific attraction, by which he gravitates towards all such characters, soon brought our minister into a close connexion with Mr. Benfield's agent and attorney; that is, with the grand contractor (whom I name to honour) Mr. Richard Atkinson; a name that will be well remembered as long as the records of this house, as long as the records of the British treasury, as long as the monumental debt of England, shall endure! This gentleman, Sir, acts as attorney for Mr. Paul Benfield. Every one who hears me is well acquainted with the sacred

friendship and the mutual attachment that subsist between him and the present minister. As many members as chose to attend in the first session of this parliament can best tell their own feelings at the scenes which were then acted." After representing this Atkinson, as the man whose will directed in framing the articles of Mr. Pitt's East India Bill, Mr. Burke proceeds: "But it was necessary to authenticate the coalition between the men of Intrigue in India, and the minister of Intrigue in England, by a studied display of the power of this their connecting link. Every trust, every honour, every distinction was to be heaped upon him. He was at once made a Director of the India Company; made an Alderman of London; and to be made, if ministry could prevail (and I am sorry to say how near, how very near they were to prevailing), representative of the capital of this kingdom. But to secure his services against all risk, he was brought in for a ministerial borough. On his part he was not wanting in zeal for the common cause. His advertisements show his motives, and the merits upon which he stood. For your minister, this worn-out veteran submitted to enter into the dusty field of the London contest; and you all remember that in the same virtuous cause, he submitted to keep a sort of public office, or counting-house, where the whole business of the last general election was managed. It was openly managed, by the direct agent and attorney of Benfield. It was managed upon Indian principles, and for an Indian interest. This was the golden cup of abominations; this the chalice of the fornications of rapine, usury, and oppression, which was

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held out by the gorgeous Eastern harlot; which so many of the people, so many of the nobles of this land, had drained to the very dregs. Do you think that no reckoning was to follow this lewd debauch? that no payment was to be demanded for this riot of public drunkenness, and national prostitution? Here! you have it, here before you. The principal of the grand election manager must be indemnified. Accordingly the claims of Benfield and his crew must be put above all inquiry."

This is a picture! It concerns my countrymen to contemplate well the features of it. I care not to what degree it may please any one to say that it is not a likeness of the group that sat for it. To me it is alone of importance to know, that, if it presents not an individual, it presents, and with consummate fidelity, a *family* likeness; that it represents the tribe; that such scenes, and such exactly, were sure to be acted, by the union between Indian influence and parliamentary influence; that such was sure to be the game, which would be played into one another's hands, by Indian corruption, and parliamentary corruption, the moment a proper channel of communication was opened between them.

The points to which Mr. Burke adverts in the next place, are of a more tangible nature. "Benfield," he says, "for several years appeared as the chief proprietor, as well as the chief agent, director, and controller of this system of debt. My best information goes to fix his share at 400,000*l.* By the scheme of the present ministry for adding interest to the principal, that smallest of the sums ever mentioned for Mr. Benfield will form a capital of 592,000*l.*, at

six per cent. interest. Benfield has thus received, by the ministerial grant before you, an annuity of 35,520*l.* a year, charged on the public revenues."[1]

After several other remarks on the proceedings of Benfield, he thus sums up; "I have laid before you, Mr. Speaker, I think with sufficient clearness, the connexion of ministers with Mr. Atkinson at the general election; I have laid open to you the connexion of Atkinson with Benfield; I have shown Benfield's employment of his wealth in creating a parliamentary interest to procure a ministerial protection; I have set before your eyes his large concern in the debt, his practices to hide that concern from the public eye; and the liberal protection which he has received from the minister. If this chain of circumstances do not lead you necessarily to conclude that the minister has paid to the avarice of Benfield the services done by Benfield's connexion to his ambition, I do not know any thing short of the confession of the party that can persuade you of his guilt. Clandestine and collusive practice can only be traced by combination

[1] Mr. Hume applied to the Directors in 1814, for information relative to the money which had been paid by the Company, under this decision of the Board of Control; also for a copy of the instructions which the Directors proposed to send out to the Presidency for separating the true from the fraudulent debts, and which instructions the Board of Control superseded. In both instances the application was unsuccessful; and Mr. Hume, from the best information he could obtain, places the amount at nearly 5,000,000*l.* "These claims," he says, "for what was called the consolidated debt of 1777, 'of which the Directors had never heard until 1776, and had never been able to obtain any satisfactory information,' amounted, with high interest made up to the end of 1784, to the sum of 54,98,500 pagodas, or 2,199,400*l.*: and, agreeably to the orders of the Board of Control sent out at that and subsequent periods, the total had been paid in 1804, with nearly twenty years' interest, amounting in the whole to near five millions sterling." Speech, ut supra, p. 22.

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and comparison of circumstances. To reject such combination and comparison is to reject the only means of detecting fraud ; it is indeed to give it a patent, and free license, to cheat with impunity. I confine myself to the connexion of ministers mediately or immediately with only two persons concerned in this debt. How many others, who support their power and greatness within and without doors, are concerned originally, or by transfers of these debts, must be left to general opinion. I refer to the Reports of the Select Committee for the proceedings of some of the agents in these affairs, and their attempts, at least, to furnish ministers with the means of buying general courts, and even whole parliaments, in the gross."[1]

In what proportion these ancient debts were false, and either collusive or forged, we have, as far as they were exempted from inquiry, no direct means of knowing. If a rule may be taken from those of a more modern date, when suspicion was more awake, and after all the checks of Mr. Dundas and his successors had been applied, it will be concluded that few were otherwise. The commissioners, who were appointed in the year 1805, to decide upon the claims of the private creditors of the Nabob of Arcot, had, in the month of November, 1814, performed adjudication on claims to the amount of 20,390,570*l.*, of which only 1,346,796*l.* were allowed as good, 19,043,774*l.* were rejected as bad; in other words, one part in twenty was all that could be regarded as true and lawful debt.[2]

[1] Second Report of Select Committee, 1781.

[2] See Tenth Report of Commissioners, the last which has yet come to

Mr. Dundas assumed that he had done enough, when he allowed the Nabob, the Company, and other creditors to object. That this was a blind, is abundantly clear; though it is possible that it stood as much between his own eyes and the light, as he was desirous of putting it between the light and eyes of other people. Where was the use of a power given to the Nabob to object? The Nabob was one of the fraudulent parties. Or to the creditors to object? of whom the greater number had an interest in conniving at others, in order that others might connive at them. Or to the Company to object? The Company was not there to object: And the servants of the Company were the creditors themselves.

It was not thus decided, by the parties on whom the power of decision depended, when the commissioners for adjudication on the debts of the Nabob

my hand, p. 469. Mr. Hume says, "The claims which formed the consolidated debt of 1777, amounting to 2,199,400*l.* were considered equally objectionable in 1774, as these new claims in 1806; and if Mr. Dundas had permitted a proper inquiry to be instituted in 1785, as the act of 24 Geo. III, directed, there is every reason to conclude that a much larger proportion of the old than the new debt would have been rejected........We are fully warranted in drawing the above conclusion, as the Court of Directors, and all the Governors in India, had invariably declared these claims of 1777 to be shameful, and such as *could not bear the light.* And, in 1781, the claimants had so bad an opinion of their right to the whole, that they made a voluntary offer to the government in Bengal to take off *one fourth* from the amount of their claims, and to agree to any kind of settlement, without interest, if the Company would but sanction their title to the remainder. There is also very little doubt, I think, but that the debt of 1767, and also the cavalry debt, if properly examined, would have turned out very objectionable. And it was the duty of Mr. Dundas to have ordered the necessary inquiry into the justice of the whole, agreeably to Mr. Pitt's bill, which made no distinction in the debts of 1767 and 1777." Speech, ut supra, p. 24, 25.

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were appointed in 1805. It was not accounted wisdom, then, to approve of all in the lump, and only allow the power of objection. It was thought necessary to inquire; and to perform adjudication, after inquiry, upon each particular case. The consequence is, as above disclosed, that one part in twenty, in a mass of claims exceeding twenty millions sterling, is all that is honest and true.

In this imputed collusion between the ministry and the creditors of the Nabob, it was not insinuated that the ministers had taken money for the favour which they had shown. Upon this Mr. Burke makes a remark, which is of the very highest importance. "I know that the ministers," says he, "will think it little less than acquittal, that they are not charged with having taken to themselves some part of the money of which they have made so liberal a donation to their partisans. If I am to speak my private sentiments, I think, that in a thousand cases for one, it would be far less mischievous to the public (and full as little dishonourable to themselves), to be polluted with direct bribery, than thus to become a standing auxiliary to the oppression, usury, and peculation of multitudes, in order to obtain a corrupt support to their power. It is by bribing; not so often by being bribed; that wicked politicians bring ruin on mankind. Avarice is a rival to the pursuits of many; it finds a multitude of checks and many opposers in every walk of life. But the objects of ambition are for the few: And every person who aims at indirect profit; and therefore wants other protection than innocence and law; instead of its rival becomes its instrument; There is a natural

allegiance and fealty due to this domineering paramount evil from all the vassal vices; which acknowledge its superiority, and readily militate under its banners; and it is under that discipline alone, that avarice is able to spread to any considerable extent, or to render itself a general public mischief. It is, therefore, no apology for ministers, that they have not been bought by the East India delinquents; that they have only formed an alliance with them, for screening each other from justice, according to the exigence of their several necessities. That they have done so is evident: and the junction of the power of office in England, with the abuse of authority in the East, has not only prevented even the appearance of redress to the grievances of India, but I wish it may not be found to have dulled, if not extinguished, the honour, the candour, the generosity, the good-nature, which used formerly to characterize the people of England."

In October, 1784, the Directors appointed Mr. Holland, an old servant, on the Madras establishment, to succeed eventually to the government of Fort St. George, upon the resignation, death or removal of Lord Macartney. The Board of Control disapprove the choice; not as wrong in itself, but "open to plausible misrepresentation." The Directors not only persist in their appointment, but proceed so far as to say, that the Board are interfering in matters "to which their control professedly does not extend." The conduct of the Board of Control is characteristic. "If the reasons," say they, "which we have adduced, do not satisfy the Court of Directors, we have certainly no right to control their

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opinion." Mr. Holland, however, is informed, that the moment he arrives in India, he will be re-called. This terminates the dispute; and Sir Archibald Campbell, a friend of Mr. Dundas, is nominated in his stead.

According to the very force of the term, the operation of control is subsequent, not precedent. Before you can control, there must be something to be controlled. Something to be controlled must be something either done or proposed. The subsequent part of transactions by no means satisfied the new organ of government for the East Indies, the Board of Control. Without an interval of reserve, the Board took upon itself to *originate* almost every measure of importance.

Intimately connected with its proceedings relative to the debts of the Nabob of the Carnatic, was the resolution formed by the Board of Control with respect to the revenues. The assignment had been adopted by the government of Madras, and approved by the Court of Directors, upon the maturest experience; as the only means of obtaining either the large balances which were due to the Company, or of preventing that dissipation of the revenue, and impoverishment of the country, by misrule, which rendered its resources unavailable to its defence, involved the Company in pecuniary distress, and exposed them continually to dangers of the greatest magnitude.

The same parties, however, whose interests were concerned in the affair of the debts, had an interest, no less decisive, in the restoration to the Nabob of the collection and disbursement of the revenues;

from which so many showers of emolument fell upon those who had the vices requisite for standing under them. The same influence which was effectual for the payment of the debts was effectual also for the restoration of the revenues. The Board of Control decreed that the revenues should be restored; for the purpose, the Board declared, of giving to all the powers of India, a strong proof of the national faith.

The order for the restitution of the assignment, and the notification of the appointment of a successor, were received by Lord Macartney at the same time. The appointment of a successor he had solicited. The overthrow of his favourite measure, from a full knowledge of the interests which were united, and at work, he was led to expect. " Well apprized," he said, " of the Nabob's extensive influence, and of the ability, industry, and vigilance of his agents, and observing a concurrence of many other circumstances, I was not without apprehensions, that, before the government of Madras could have timely notice of the train, the assignment might be blown up at home; the sudden shock of which, I knew, must almost instantly overthrow the Company in the Carnatic. I, therefore, employed myself most assiduously, in making preparations, to mitigate the mischief; and by degrees collected and stored up all the money that it was possible to reserve with safety from other services and demands; so that when the explosion burst upon us, I had provided an unexpected mass, of little less than thirteen lacs of rupees, to resist its first violence."[1]

[1] Letter from Lord Macartney to the Committee of Secrecy of the Court

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In conformity with his declared determination, not to be accessary to a measure which he regarded as teeming with mischief, or a witness to the triumph of those whose cupidity he had restrained,[1] Lord Macartney chose not to hold any longer the reins of government. But one attempt he thought proper to make; which was, to return to England by way of Bengal; and endeavour to convey to the Supreme Board so correct a notion of the evils to which the recent instructions from home were likely to give birth, as might induce them to delay the execution of those orders, or at least exert themselves to prevent as far as possible their pernicious effects. In less than a week, after receiving the despatches from England, he embarked, and arrived about the middle of June at Calcutta. The Governor-General and Council were too conscious of their own pre-

of Directors, dated Calcutta, 27th July, 1785. How much Lord Macartney and his Council agreed with Mr. Burke, respecting the springs which in all these transactions moved the machinery, still further appears from the following words: "The Ameer al Omrah and Mr. Benfield were well known to each other; mutual esteem did not appear to attract them to each other; but as soon as the objects of their antipathies were the same, they united at once. In this partnership, Mr. Benfield has brought his knowledge of ministers, his interest in parliament, to the former experience of his successful intrigues upon the spot." Copy of Letter from the Government of Fort St. George to that of Bengal, dated 28th May, 1783.

[1] "I considered the assignment as the rock of your strength in the Carnatic, and therefore had guarded it with vigilance against the assaults of the Durbar and the menaces of Bengal. It had contributed largely to your support through the war, and might have secured the stability of your commerce and dominion on the coast. DIIS ALITER VISUM EST! I had long since expressed my hope of not being made a witness or an accessary to a premature surrender of it; and indeed no man could be less properly qualified on such an occasion than myself, being personally disagreeable to the Durbar, and from my knowledge of their duplicity, disaffection, and politics, totally unqualified for any negotiation that required the slightest degree of confidence to be reposed in them." Letter to the Secret Committee, 27th July, 1785.

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carious and dependent situation, to risk the appearance of disobedience to an order, regarding what they might suppose a favourite scheme of the Board of Control. Lord Macartney, therefore, was disappointed in his expectation, of obtaining through them, a delay of the embarrassments which the surrender of the revenues would produce. He had indulged, however, another hope. If the resources of the Carnatic were snatched from the necessities of the Madras government, he believed that the want might be supplied by the surplus revenues of Bengal. "I had long before," he says, in a letter to the Secret Committee of Directors, "been so much enlivened (and your Honourable House was, no doubt, enlivened also) by the happy prospects held out in the late Governor-General's letter to you of the 16th of December, 1783, published in several newspapers both foreign and domestic, that I flattered myself with hopes of finding such resources in Bengal alone, as might relieve any exigency or distress in the rest of India, resulting from a loss of the assignment, or from other misfortunes; but in the range of my inquiries, no distinct traces were to be discovered of these prognosticated funds. I had, it seems, formed a visionary estimate; the reality disappeared like a phantom on the approach of experiment, and I looked here for it in vain. The government declared themselves strangers to Mr. Hastings's letter, and indicated not a few symptoms of their own necessities."[1]

They, accordingly, assured Lord Macartney, "that

[1] Letter to the Secret Committee, 27th July, 1785.

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the exhausted state of the finances of the Bengal government would not admit of any extraordinary and continued aid to Fort St. George;"[1] expressing at the same time their desire to contribute what assistance was in their power to relieve the distress, which the loss of the revenues, they acknowledged, must produce.[2]

A dangerous illness prolonged the stay of Lord Macartney at Calcutta, and previous to his departure, he received a despatch from the Court of Directors, in which was announced to him his appointment to be Governor-General of Bengal. After his removal from the Government, after the subversion of his favourite plans at Madras; an appointment, almost immediate, and without solicitation, to the highest station in the government of India, is not the clearest proof of systematic plans, and correspondent execution. The motives, at the same time, appear to have been more than usually honourable and pure. Though Lord Macartney, from the praises which Mr. Fox and his party had bestowed upon him in Parliament, might have been suspected of views in conformity with theirs; though he had no connexion with the existing administration which could render it personally desirable to promote him; though the Board of Control had even entered upon the examination of the differences between him and Mr. Hastings, with minds unfavourably disposed, the examination impressed the mind of Mr. Dundas with so strong an

[1] Barrow's Life of Lord Macartney, i. 282.

[2] The conduct of Lord Macartney in this important business is displayed in a series of official documents, entitled, "Papers relating to the affairs of the Carnatic," vol. ii., printed by order of the House of Commons in 1803.

idea of the merit of that Lord's administration, that he induced Mr. Pitt to concur with him in recommending Lord Macartney to the Court of Directors, that is, in appointing him Governor-General of Bengal.

The gratification offered to those powerful passions, the objects of which are wealth and power, had not so great an ascendency over the mind of Lord Macartney, as to render him insensible to other considerations. His health required a season of repose, and the salutary influence of his native climate. The state of the government in India was such as to demand reforms; reforms, without which the administration could not indeed be successful; but which he was not sure of obtaining power to effect. The members of the Bengal administration had been leagued with Mr. Hastings in opposing and undervaluing his government at Madras; and peculiar objections applied to any thought of co-operation with the person who was left by Mr. Hastings at its head.[1] He resolved, therefore, to decline the ap-

[1] This assumption which is gratuitous, is quite at variance with the language of repeated letters from Lord Macartney to Sir John Macpherson. On the 3rd January, 1782, he writes, "Let me now thank you for your kindness in telling me what appears to you amiss in my conduct; you have acted like a true friend, and I shall ever remember it with gratitude as long as I live." On the 20th, he resumes, "In all the parts of the world I have been in, and of the various men I have transacted business with, I must say, I never was better pleased with any man than yourself. There is no pleasure equal to the sympathy of friends." The only event that could have disturbed this cordiality, the restoration of the assigned territory to the Nabob of Arcot was the act of the Court of Directors, not of Mr. Macpherson, although it had his concurrence. This difference of opinion was scarcely sufficient to have cancelled a gratitude which Lord Macartney had professed should end only with his life. There is no reason to believe that Lord Macartney entertained any peculiar objection to a co-operation with his former friend. Case of Sir John Macpherson, 5, 6.—W.

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pointment; at least for a season, till a visit to England should enable him to determine, by conference with ministers and directors, the arrangements which he might have it in his power to effect.

He arrived in England on the 9th of January, 1786, and on the 13th had a conference with the chairman, and deputy chairman, of the Court of Directors. The regulations on which he insisted, as of peculiar necessity for the more successful government of India, were two. The entire dependence of the military upon the civil power he represented, as not only recommended by the most obvious dictates of reason, but conformable to the practice of the English government in all its other dependencies, and even to that of the East India Company, previous to the instructions of 1774; instructions which were framed on the spur of the occasion, and created two independent powers in the same administration. Secondly, a too rigid adherence to the rule of seniority in filling the more important departments of the State, or even to that of confiding the choice to the Company's servants, was attended, he affirmed, with the greatest inconveniences; deprived the government of the inestimable use of talents; lessened the motives to meritorious exertion among the servants; and fostered a spirit, most injurious to the government, of independence and disobedience as towards its head. With proper regulations in these particulars; a power of deciding against the opinion of the Council; and such changes among the higher servants, as were required by the particular circumstances of the present case, he conceived that he might, but without them, he could not, accept of the

government of India, with hopes of usefulness to his country, or honour to himself.

A minute of this conversation was transmitted by the Chairs to the Board of Control; and on the 20th of February, Lord Macartney met Mr. Dundas, and Mr. Pitt. Even since his arrival, Mr. Pitt, in answer to an attack by Mr. Fox, upon the inconsistency of appointing that nobleman to the chief station in the Indian government almost at the very moment when his principal measure had been reversed, had been called forth to pronounce a warm panegyric upon Lord Macartney; and to declare that, with the exception of that one arrangement, his conduct in his government had merited all the praise which language could bestow; and pointed him out as a most eligible choice for the still more important trust of Governor-General of Bengal. To the new regulations or reforms, proposed by Lord Macartney, Mr. Pitt gave a sort of general approbation; but with considerable latitude, in regard to the mode and time of alteration. Lord Macartney remarked, that what he had observed in England had rather increased, than diminished, the estimate which he had formed of the support which would be necessary to counteract the opposition, which, both at home and abroad, he was sure to experience; and he pointed in direct terms to what he saw of the enmity of Mr. Hastings, the influence which he retained among both those who were, and those who had been the servants of the Company, as well as the influence which arose from the opinion of the favour borne to him by some of those persons who were high in the administration. His opinion was, that

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some distinguished mark of favour, which would impose in some degree upon minds that were adversely disposed, and proclaim to all, the power with which he might expect to be supported, was necessary to encounter the difficulties with which he would have to contend. He alluded to a British peerage, to which, even on other grounds, he conceived that he was not without a claim.

No further communication was vouchsafed to Lord Macartney ; and in three days after this conversation he learned, that Lord Cornwallis was appointed Governor-General of Bengal. The appointment of Lord Macartney was opposed by several members of the administration, among others the Chancellor Thurlow, whose impetuosity gave weight to his opinions ; it was also odious to all those among the East India Directors and Proprietors, who were the partisans either of Hastings or Macpherson. "When, therefore," says a letter of Lord Melville, "against such an accumulation of discontent and opposition, Mr. Pitt was induced by me to concur in the return of Lord Macartney to India, as Governor-General, it was not unnatural that both of us should have felt hurt, that he did not rather repose his future fortune in our hands, than make it the subject of a *sine qua non* preliminary. And I think if Lord Macartney had known us as well then as he did afterwards, he would have felt as we did." These were the private grounds : As public ones, the same letter states, that the precedent was disapproved of indicating to the world that a premium was necessary to induce persons of consideration in England to accept the office of Governor-General in India, at the very moment

when the resolution was taken of not confining the high situations in India to the servants of the Company.[1]

We have now arrived at the period of another parliamentary proceeding, which excited attention by its pomp, and by the influence upon the public mind of those whose interests it affected, much more than by any material change which it either produced, or was calculated to produce, upon the state of affairs in India. In a history of those affairs, a very contracted summary of the voluminous records which are left of it, is all for which a place can be usefully found.

The parties into which parliament was now divided; the ministerial, headed by Mr. Pitt; and that of the opposition, by Mr. Fox; had, both, at a preceding period, found it their interest to arraign the government in India. The interest of the party in opposition remained, in this respect, the same as before. That of the ministry was altogether changed. It appeared to those whose interest it still was to arraign the government in India, that the most convenient form the attack could assume was that of an accusation of Mr. Hastings. The ministry had many reasons to dislike the scrutiny into which such a measure would lead. But they were too far committed, by the violent censures which they had formerly pronounced, to render it expedient for them to oppose it. Their policy was, to gain credit by an appearance of consent, and to secure their own objects, as far as it might be done, under

[1] Letter from Lord Melville, in Barrow's Macartney, i. 330.

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1786. The vehement struggles of the parliamentary parties had prevented them, during the year 1784, from following up by any correspondent measure the violent censures which had fallen upon the administration of India. The preceding threats of Mr. Burke received a more determinate character, when he gave notice on the 20th of June, 1785, " That if no other gentleman would undertake the business, he would, at a future day, make a motion respecting the conduct of a gentleman just returned from India." On the first day of the following session, he was called upon by Major Scott, who had acted in the avowed capacity of the agent of Mr. Hastings, to produce his charges, and commit the subject to investigation. On the 18th of February, 1786, he gave commencement to the undertaking, by a motion for a variety of papers; and a debate of great length ensued, more remarkable for the criminations, with which the leaders of the two parties appeared desirous of aspersing one another, than for any light which it threw upon the subjects in dispute

Mr. Burke began his speech, by requiring that the Journals of the House should be opened, and that the 44th and 45th of that series of resolutions, which Mr. Dundas had moved, and the House adopted on the 29th of May, 1782, should be read: " I. That,—for the purpose of conveying entire conviction to the minds of the native princes, that to commence hostilities, without just provocation, against them, and to pursue schemes of conquest and extent of dominion, are measures repugnant to the wish, the honour, and

the policy of this nation—the parliament of Great Britain should give some signal mark of its displeasure against those, (in whatever degree intrusted with the charge of the East India Company's affairs,) who shall appear wilfully to have adopted, or countenanced, a system, tending to inspire a reasonable distrust of the moderation, justice, and good faith of the British nation:—2. That Warren Hastings, Esq. Governor-General of Bengal, and William Hornby, Esq. President of the Council at Bombay, having in sundry instances acted in a manner repugnant to the honour and policy of this nation, and thereby brought great calamities on India, and enormous expenses on the East India Company, it is the duty of the Directors of the said Company, to pursue all legal and effectual means for the removal of the said Governor-General and President from their respective offices, and to recall them to Great Britain." After Mr. Burke had remarked that the present task would better have become the author of these resolutions than himself, he vented his sarcasms on a zeal against Indian delinquency, which was put on, or put off, according as convenience suggested; exhibited a short history of the notice which parliament had taken of Indian affairs; and, in the next place, adduced the considerations which, at the present moment, appeared to call upon the House to institute penal proceedings. It then remained for him, to present a view of the different courses, which, in such a case, it was competent for that assembly to pursue. In the first place, the House might effect a prosecution by the Attorney-General. But to this mode he had three very strong objections. First,

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the person who held that office appeared to be unfriendly to the prosecution; whatever depended upon his exertions was, therefore, an object of despair. Secondly, Mr. Burke regarded a jury as little qualified to decide upon matters of the description of those which would form the subject of the present judicial inquiry. Thirdly, he looked upon the Court of King's Bench as a tribunal radically unfit to be trusted in questions of that large and elevated nature. The inveterate habit of looking, as in that court, at minute affairs, and that only in their most contracted relations, produced a narrowness of mind, which was almost invariably at fault, when the extended relations of things or subjects of a comprehensive nature were the objects to be investigated and judged.[1] A bill of pains and penalties was a mode of penal inquiry which did not, in his opinion, afford sufficient security for justice and fair dealing towards the party accused. The last mode of proceeding, to which the House might have recourse, was that of impeachment; and that was the mode, the adoption of which he intended to recommend. He should, however, propose a slight departure from the usual order of the steps. Instead of urging the House to vote immediately a bill of impeachment, to which succeeded a Committee by whom the articles were framed, he should move for papers, in the first instance: and then draw up the articles with all the advantage in favour of justice, which deliberation and knowledge, in place of precipitation and igno-

[1] "The magnitude of the trial would overwhelm," he said, "the varying multitude of lesser causes, of *meum* and *tuum*, assault and battery, conversion and trover, trespass and burglary," &c.

rance, were calculated to yield. He concluded by a motion for one of the sets of papers which it was his object to obtain.

Mr. Dundas thought that the allusions to himself demanded a reply. He observed, that, at one time during the speech, he began to regard himself, not Mr. Hastings, as the criminal whom the Right Honourable Gentleman meant to impeach: that he was obliged, however, to those who had any charge to prefer against him, when they appeared without disguise: that he wished to meet his accusers face to face: that he had never professed any intention to prosecute the late Governor-General of India: that the extermination of the Rohillas, the aggression upon the Mahrattas, and the misapplication of the revenue, were the points on which his condemnation rested: that he did move the resolutions which had been read; and entertained now the same sentiments which he then expressed: that the resolutions he had moved, went only to the point of recall; that though in several particulars he deemed the conduct of Mr. Hastings highly culpable, yet, as often as he examined it, which he had done very minutely, the possibility of annexing to it a criminal intention eluded his grasp; that the Directors were often the cause of those proceedings to which the appearance of criminality was attached; that after India was glutted with their patronage, no fewer than thirty-six writers had been sent out, to load with expense the civil establishment, in one year; that year of purity, when the situation of the present accusers sufficiently indicated the *shop*, from which the commodity was supplied; that subsequently to the

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period at which he had moved the resolutions in question, Mr. Hastings had rendered important services; and merited the vote of thanks with which his employers had thought fit to reward him. Mr. Dundas concluded, by saying, that he had no objection to the motion, and that, but for the insinuations against himself, he should not have thought it necessary to speak.

The defence, however, of Mr. Dundas, is not less inconsistent than his conduct. His profession of a belief, that he himself was to be the object of the prosecution, was an affectation of wit, which proved not, though Mr. Hastings were polluted, that Mr. Dundas was pure; or that in the accusation of the former it was not highly proper, even requisite, to hold up to view what was suspicious in the conduct of the latter. Whether he ever had the intention to prosecute Mr. Hastings, was known only to himself. But that he had pronounced accusations against Mr. Hastings, which were either unjust, or demanded a prosecution, all the world could judge. When he said that the resolutions which he had moved, and which had immediately been read, implied nothing more than recall, it proved only one of two things; either that he regarded public delinquency, in a very favourable light, or that this was one of those bold assertions, in the face of evidence, which men of a certain character are always ready to make. If Warren Hastings had really, as was affirmed by Mr. Dundas, and voted at his suggestion by the House of Commons, " in sundry instances tarnished the honour, and violated the policy of his country, brought great calamities on India, and enormous

expenses to the East India Company," had he merited nothing but recall? Lord Macartney was recalled; Sir John Macpherson was recalled; many others were recalled; against whom no delinquency was alleged. Recall was not considered as a punishment. And was nothing else due to such offences as those which Mr. Dundas laid to the charge of Mr. Hastings? But either the words of Mr. Dundas's resolutions were very ill adapted to express his meaning, or they did imply much more than recall. Of the two resolutions which Mr. Burke had required to be read, the *last* recommended the measure of recall to the Court of Directors, whose prerogative it was; the *first* recommended something else, *some signal mark of the displeasure of the Parliament of Great Britain.* What might this be? Surely not recall; which was not within the province of Parliament. Surely not a mere advice to the Directors to recall, which seems to fall wonderfully short of *a signal mark of its displeasure.* But Mr. Dundas still retained the very sentiments respecting the conduct of Mr. Hastings which he had entertained when he described it as requiring "some signal mark of the displeasure of the British Parliament;" yet, as often as he examined that conduct, the possibility of annexing to it a criminal intention eluded his grasp: nay, he regarded Mr. Hastings as the proper object of the Company's thanks; that is to say, in the opinion of Mr. Dundas, Mr. Hastings was, at one and the same moment, the proper object of "some signal mark of the displeasure of the British Parliament," and of a vote of thanks at the East India House.

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The Court of Directors were the cause of the bad actions of Mr. Hastings. Why then did Mr. Dundas pronounce those violent censures of Mr. Hastings? And why did he profess that he now entertained the same sentiments which he then declared? He thought him culpable, forsooth, but not criminal; though he had described him as having "violated the honour and policy of his country, brought great calamities upon India, and enormous expense on his employers;" so tenderly did Mr. Dundas think it proper to deal with public offences, which he himself described as of the deepest dye! But he could not affix criminal *intention* to the misconduct of Mr. Hastings. It required much less ingenuity than that of Mr. Dundas, to make it appear that there is no such thing as criminal intention in the world. The man who works all day to earn a crown, and the man who robs him of it, as he goes home at night, act, each of them, with the very same intention; that of obtaining a certain portion of money. Mr. Dundas might have known, that criminal intention is by no means necessary to constitute the highest possible degree of public delinquency. Where is the criminal intention of the sentinel who falls asleep at his post? Where was the criminal intention of Admiral Byng, who suffered a capital punishment? The assassin of Henry the Fourth of France was doubtless actuated by the purest and most heroic intentions. Yet who doubts that he was the proper object of penal exaction? Such are the inconsistencies of a speech, which yet appears to have passed as sterling, in the assembly to which it

was addressed; and such is a sample of the speeches which have had so much influence in the government of this nation!

The year in which Mr. Fox had been minister was accused of overloading the patronage of India; and Mr. Dundas hazarded a curious proposition, to which his experience yielded weight, that the circumstance of who was minister always indicated the *shop*, as he called it, from which Indian patronage was retailed.[1] This called up Mr. Fox, who began by declaring that he spoke on account solely of the charges which had been levelled against himself. Surmise might be answered, he thought, by assertion; and, therefore, he solemnly declared, that he had never been the cause of sending out except one single writer to India, and that during the administration of Lord Shelburne. The consistency, however, of the Honourable Gentleman suggested strongly a few remarks,

[1] Mr. Dundas did not intimate that the circumstance of who was minister "always" indicated the shop for Indian patronage. He indicated it in one specific case only, that of the administration of 1783, and why? This should have been stated if it was worth while to have noticed the subject at all. Hastings had written home in 1782, complaining of the situation he was in, in consequence of so many writers being sent out to him, declaring that he had at that time 250 young men, the younger sons of the first families in Great Britain, all gaping for lacs, and scrambling for patronage. Notwithstanding this remonstrance thirty-six writers were sent out in 1783. Fox and Burke disclaimed for themselves any hand in these appointments; but it seems to have been understood on both sides of the House, that the ministry of the time of which they were members were not unconcerned in the abuse of patronage. This overloading of the India Service was at once a source of embarrassment to the government, and disappointment to the individuals; and the latter was very likely to have brought upon Hastings much of the opposition which his measures encountered, and much of the animosity which he personally experienced.—W.

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notwithstanding his boasted readiness to face his opponents. The power of facing, God knew, was not to be numbered among his wants; even when driven, as on the present occasion, to the miserable necessity of applauding, in the latter part of his speech, what he condemned in the former. His opinion of Mr. Hastings remained the same as when he arraigned him; yet he thought him a fit object of thanks. He condemned the Rohilla war; the treaty of Poorunder; and the expense of his administration. Gracious heaven! Was that all? Was the shameful plunder of the Mogul Emperor, the shameful plunder of the Raja of Benares, the shameful plunder of the Princesses of Oude, worthy of no moral abhorrence, of no legal visitation? Was the tender language now held by the Honourable Gentleman, respecting the author of those disgraceful transactions, in conformity either with the facts, or his former declarations?

Mr. Pitt rose in great warmth, to express, he said, some part of the indignation, with which his breast was filled, and which he trusted, no man of generous and honourable feelings could avoid sharing with him. Who had accused his Honourable Friend of guilt, in now applauding the man whom he had formerly condemned? Who, but he, who, in the face of Europe, had united councils with the man whom for a series of years he had loaded with the most extravagant epithets of reproach, and threatened with the severest punishment! The height of the colouring which that individual had bestowed upon the supposed inconsistency of his friend, might have led

persons unacquainted with his character, to suppose that he possessed a heart really capable of feeling abhorrence at the meanness and baseness of those who shifted their sentiments with their interests. As to the charge of inconsistency against his Honourable Friend, was it not very possible for the conduct of any man to merit, at one time, condemnation, at another, applause? Yet it was true, that the practice of the accuser had instructed the world in the merit of looking to persons, not to principles! He then proceeded to extenuate the criminality of the Rohilla war. And concluded, by ascribing the highest praise to that portion of the administration of Hastings which had succeeded the date of the resolutions of Mr. Dundas.

On this speech, what first suggests itself is, that a great proportion of it is employed, not in proving that Mr. Dundas had not, but in proving that Mr. Fox had, been corruptly inconsistent. In what respect, however, did it clear the character of Mr. Dundas, to implicate that of the man who accused him? How great soever the baseness of Mr. Fox, that of Mr. Dundas might equal, and even surpass it. True, indeed, the conduct of a man, at one time bad, might, at another time, be the reverse. But would that be a good law which should exempt crimes from punishment, provided the perpetrators happened afterwards to perform acts of a useful description? A man might thus get securely rich by theft and robbery, on the condition of making a beneficent use of the fruits of his crimes. "The former portion of the administration of Mr. Hastings was criminal; the

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latter, meritorious." It suited the minister's present purpose to say so. But they who study the history, will probably find, that of the praise which is due to the administration of Mr. Hastings, a greater portion belongs to the part which Mr. Pitt condemns, than to that which he applauds: To such a degree was either his judgment incorrect, or his language deceitful![1]

The production of the papers was not opposed, till a motion was made for those relating to the business of Oude during the latter years of Mr. Hastings's

[1] The abstract and criticisms of this debate are partial and uncandid. The 45th Resolution of the Committee imposed upon the Directors of the East India Company, "The duty of pursuing all legal and effectual means for the removal of Warren Hastings and William Hornby from their respective offices, and their recall to Great Britain." In proposing such a Resolution, most certainly Mr. Dundas gave no intimation whatever, much less a pledge of his intending to propose that parliament should undertake a duty thus specially imposed upon the Court. Much less was it incumbent on him or any member of the government to suggest further proceedings, when the result of the Court's recourse to legal measures to carry the Resolution of the House of Commons into execution, was the confirmation by those vested with lawful authority, the Court of Proprietors, of the individuals whom it had been proposed to remove. Again, supposing that the measures anterior to the resolution of the 26th May, 1782, had been proved, as they were not, "repugnant to the wish and the honour and policy of the nation," where was the inconsistency of admitting their exculpation by subsequent merits? The principle laid down by Mr. Pitt, is that alone by which the conduct of persons in office can be equitably tested. "He held it," he observed, "absolutely necessary in point of justice and of right, to examine the whole of the public conduct of any servant of the people, to give him due credit for such parts as were meritorious, as well as to censure him for such as were culpable; and, for his own part, he should not hesitate for one moment to declare that, however censurable some parts of Mr. Hastings's conduct might be made to appear, he must, notwithstanding, consider such as were praiseworthy as entitled to the warmest approbation. Nay, as a sufficient ground for reward and thanks, could they be proved to predominate over what was exceptionable."—W.

administration. To this Mr. Pitt objected. He said, it would introduce new matter; and make the ground of the accusation wider than necessary: He wished to confine the judicial inquiry to the period embraced in the reports of the Committees of 1781. Mr. Dundas stood up for the same doctrine. If the object, however, was, to do justice between Mr. Hastings and the nation, it will be difficult to imagine a reason, why one, rather than another part of his administration should escape inquiry. Even the friends, however, of Mr. Hastings, urged the necessity of obtaining the Oude papers; and, therefore, they were granted.

A motion was made for papers relative to the Mahratta peace. It was opposed, as leading to the discovery of secrets. On ground like this, it was replied, the minister could never want a screen to any possible delinquency. A motion for the papers relative to the negotiations which Mr. Hastings had carried on at Delhi in the last months of his administration, was also made, and urged with great importunity. It was opposed on the same grounds, and both were rejected.

During the debates on these motions, objections had begun to be started, on the mode of procedure which Mr. Burke had embraced. To call for papers relative to misconduct, and from the information which these might afford, to shape the charges by the guilt, was not, it was contended, a course which parliament ought to allow. The charges ought to be exhibited first; and no evidentiary matter ought to be granted, but such alone as could be shown to bear

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upon the charge. These objections, however, produced not any decisive result, till the 3rd of April, when Mr. Burke proposed to call to the bar some of the gentlemen who had been ordered, as witnesses, to attend. On this occasion, the crown lawyers opposed in phalanx. Their speeches were long, but their arguments only two. Not to produce the charges in the first instance, and proof, strictly confined to those charges, was unfair, they alleged, to the party accused. To produce the charges first, and no proof but what strictly applied to the charges, was the mode of proceeding in the Courts of Law. Mr. Burke, and they who supported him, maintained, that this was an attempt to infringe the order of procedure already adopted by the House; which had granted evidence in pursuance of its own plan; had formed itself into a Committee for the express purpose of receiving evidence; and had summoned witnesses to be at that moment in attendance. They affirmed, that the mode of proceeding, by collecting evidence in the first instance, and thence educing the charges, was favourable to precision and accuracy; that the opposition, which it experienced, savoured of a design to restrict evidence; and that the grand muster of the crown lawyers for such a purpose was loaded with suspicion. The House, however, agreed with the lawyers; which is as much as to say, that such was the plan of the minister; and the accuser was obliged to invert the order of his steps. Some elucidation of the incident is strongly required.

To collect some knowledge of the facts of the sup-

posed delinquency; to explore the sources of evidence; to seek to throw light upon the subject of accusation; to trace the media of proof from one link to another, often the only way in which it can be traced; and, when the subject is thus in some degree understood, to put the matter of delinquency into those propositions which are the best adapted to present it truly and effectually to the test of proof, is not, say the lawyers, the way to justice. Before you are allowed to collect one particle of knowledge respecting the facts of the delinquency; before you are allowed to explore a single source of evidence, or do any one thing which can throw light upon the subject, you must put the matter of delinquency, which you are allowed, as far as the lawyers can prevent you, to know nothing about, into propositions for the reception of proof. And having thus made up the subject, which you know nothing about, into a set of propositions, such as ignorance has enabled you to make them, you are to be restrained from adducing one particle of evidence to any thing but your first propositions, how much soever you may find, as light breaks in upon you, that there is of the matter of delinquency, which your propositions, made by compulsion under ignorance, do not embrace. And this is the method, found out and prescribed by the lawyers, for elucidating the field of delinquency, and ensuring the detection of crime!

To whom is the most complete and efficient production of evidence unfavourable? To the guilty individual. To whom is it favourable? To all who are innocent, and to the community at large. Evi-

dence, said the lawyers, shall not be produced, till after your charges, because it may be unfavourable to Mr. Hastings.

If they meant that partial evidence might operate unequitably on the public mind; the answer is immediate: why allow it to be partial? Mr. Hastings knew the field of evidence far better than his accusers, and might call for what he required.

The lawyers were very merciful. It was a cruel thing to an innocent man, to have evidence of guilt exhibited against him; and every man should be presumed innocent, till proved guilty. From these premises there is only one legitimate inference; and that is, that evidence of guilt should never be exhibited against any man.

The rule of the lawyers for the making of propositions is truly their own. It is, to make them out of nothing. All other men, on all occasions, tell us to get knowledge first; and then to make propositions. Out of total ignorance how can any thing the result of knowledge be made?—No, say the lawyers; make your propositions, while in absolute ignorance; and, by help of that absolute ignorance, show, that even the evidence which you call for is evidence to the point. It is sufficiently clear, that when the man who endeavours to throw light upon delinquency is thus compelled to grope his way in the dark, a thousand chances are provided for delinquency to escape.

When a rule is established by lawyers, and furiously upheld; a rule pregnant with absurdity, and

contrary to the ends of justice, but eminently conducive to the profit and power of lawyers, to what sort of motives does common sense guide us in ascribing the evil? Delinquency produces law-suits; law-suits produce lawyers' fees and lawyers' power; whatever can multiply the law-suits which arise out of delinquency, multiplies the occasions on which lawyers' power and profit are gained. That a rule to draw up the accusatory propositions before inquiry, that is, without knowledge, and to adduce evidence to nothing but those propositions which ignorance drew, is a contrivance, skilfully adapted, to multiply the law suits to which delinquency gives birth, is too obvious to be capable of being denied.

And what is the species of production, which their rule of acting in the dark enables the lawyers themselves, in the guise of the writing of accusation or bill of indictment, to supply? A thing so strange, so extravagant, so barbarous, that it more resembles the freak of a mischievous imagination, playing a malignant frolic, than the sober contrivance of reason, even in its least instructed condition.

Not proceeding by knowledge, but conjecture, as often as the intention is really to include, not to avoid including, the offence, they are obliged to ascribe to the supposed delinquent, not one crime, but all manner of crimes, which bear any sort of resemblance to that of which they suppose him to have been really guilty; in order, that, in a multitude of guesses, they may have some chance to be right in one.

And this course they pretend to take, out of tenderness to the party accused. To save him from the pain of having evidence adduced to the one crime of which he is guilty, they solemnly charge him with the guilt of a great variety of crimes. Where innocence really exists, the production of evidence is evidence to innocence, and is the greatest favour which innocence, under suspicion, can receive.

The absurdities, with which, under this irrational mode of procedure, a bill of indictment is frequently stuffed, far exceed the limits of ordinary belief. Not only are the grossest known falsehoods regularly and invariably asserted, and found by juries upon their oaths; but things contradictory of one another, and absolutely impossible in nature. Thus, when it is not known in which of two ways a man has been murdered, he is positively affirmed to have been murdered twice; first to have been murdered in one way; and after being murdered in that way, to be murdered again in another.

The truth, in the mean time, is, that a system of preliminary operations, having it for their object to trace out and secure evidence for the purpose of the ultimate examination and decision, so far from being adverse to the ends of justice, would form a constituent part of every rational course of judicial procedure. By means of these preparatory operations, the judge would be enabled to come to the examination of the case, with all the circumstances before him on which his decision ought to be grounded, or which the nature of the case allowed to be produced. Without these preparatory operations, the judge is always liable to come to the examination with only

a small part of the circumstances before him, and very seldom indeed can have the advantage of the whole. The very nature of crime, which as much as possible seeks concealment, implies that the evidence of it must be traced. Some things are only indications of other indications. The last may alone be decisive evidence of guilt; but evidence, which would have remained undiscovered, had the inquirer not been allowed to trace it, by previously exploring the first. One man may be supposed to know something of the crime. When examined, he is found to know nothing of it himself, but points out another man, from whom decisive evidence is obtained. If a preliminary procedure for the purpose of tracing evidence is allowed, the persons and things whose evidence is immediate to the fact in question, are produced to the judge; and the truth is ascertained. If the preliminary procedure is forbidden, the persons and things, whose evidence would go immediately to the facts in question, are often not produced to the judge; and in this and a thousand other ways, the means of ascertaining the truth, that is of satisfying justice, are disappointed of their end.

It thus appears, that a confederacy of crown lawyers and ministers, with a House of Commons at their beck, succeeded in depriving the prosecution of Mr. Hastings of an important and essential instrument of justice, of which not that cause only, but every cause ought to have the advantage; and that they succeeded on two untenable grounds; first, because the search for evidence was unfavourable to Mr. Hastings, which was as much as to say, that

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Mr. Hastings was guilty, not innocent; next, because it was contrary to the practice of the courts of law; as if the vices of the courts of law ought not only to be inviolate on their own ground, but never put to shame and disgrace by the contrast of virtues in any other place![1]

Mr. Burke being thus compelled to produce the particulars of his accusation, before he was allowed by aid of evidence to acquaint himself with the matter of it,[2] exhibited nine of his articles of charge on the fourth of April, and twelve more in the course of the following week. I conceive that in this place nothing more is required than to give indication of the principal topics. These were, the Rohilla war; the transactions respecting Benares and its Raja; the measure by which Corah and Allahabad, and the

[1] For a profound elucidation of what he calls Investigatorial Procedure, see Mr. Bentham's Treatise, entitled Scotch Reform.

[2] If this were true, it would argue Burke capable of atrocious iniquity. To prefer a charge without being acquainted with the matter of it, would be a most infamous species of delation. But it is not true. Burke's charges were avowedly framed upon the investigations of the Select Committee, and upon documents already in his possession; and so little were his accusations affected by the decision of the 3rd of April, that they were preferred on the following day. In all that has been previously said upon this subject, it has been forgotten, that in theory at least, the question was not the guilt or innocence of Hastings. He was not supposed to be upon his trial. The proceedings were preliminary, and amounted to no more than to determine whether there were reasonable grounds why the House of Commons should become his accusers. Proof of this, as in the bills found by a Grand Jury did not render it necessary to exhaust evidence; and it was the more necessary to be reserved in calling for it, as whatever might be the professed principles of the proceedings of the House, they could not fail to prejudice the accused. It is argued indeed, that the evidence was as likely to clear as to condemn Hastings, but here again it is forgotten, that evidence on one side only was demanded, evidence in support of the accusation. A perusal of the debate will satisfy every impartial mind that the lawyers were more rational than the rhetoricians.—W.

tribute due for the province of Bengal, were taken from the Mogul; the transactions in Oude respecting the Begums, the English Residents, and other affairs; those regarding the Mahratta war, and the peace by which it was concluded; the measures of internal administration, including the arrangements for the collection of the revenues and the administration of justice, the death of Nuncomar, and treatment of Mohammed Reza Khan; disobedience of the commands, and contempt for the authority, of the Directors; extravagant expense, for the purpose of creating dependants and enriching favourites; and the receipt of presents or bribes. An additional article was afterwards presented, on the 6th of May, which related to the treatment bestowed upon Fyzoolla Khan.[1] I shall not account it necessary to follow the debates, to which the motions upon these several charges gave birth, in the House of Commons; both because they diffused little information on the subject, and because the facts have already been stated with such lights as, it is hoped, may suffice to form a proper judgment upon each.

Not only, on several preliminary questions, did the ministers zealously concur with the advocates of Mr. Hastings; but even when the great question of the Rohilla war, and the ruin of a whole people, came under discussion, Mr. Hastings had the decisive advantage of their support. Mr. Dundas himself, who had so recently enumerated the Rohilla war

[1] The better understanding of the subject seems to require a more precise detail of the charges than is given in this place, or than can be collected from the detached notices found elsewhere. As a summary recapitulation of them may be useful, it will be given at the end of this chapter.—W.

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among the criminal transactions which called forth his condemnation, rose up in its defence;[1] and the House voted, by a majority of 119 to 67, that no impeachable matter was contained in the charge.

It was not without reason that the friends of Mr. Hastings now triumphed in the prospect of victory. Every point had been carried in his favour: The minister had steadily and uniformly lent him the weight of his irresistible power: And the most formidable article in the bill of accusation, had been rejected as void of criminating force.

The motion on the charge respecting the extermination of the Rohillas was made on the first of June. That on the charge respecting the Raja of Benares was made on the 13th of the same month. On that day, however, the sentiments of Mr. Pitt appeared to have undergone a revolution. The exceptions, indeed, which he took to the conduct of Mr. Hastings, were not very weighty. In his demands upon the Raja, and the exercise of the arbitrary discretion intrusted to him, Mr. Hastings had exceeded the exigency.

[1] The following are the words of the eighth of the resolutions, which he moved in 1781, "That too strong a confirmation cannot be given to the sentiments and resolutions of the Court of Directors and the Court of Proprietors, *in condemnation* of the Rohilla war:—That the conduct of the President and Select Committee of Bengal appears, in almost every stage of it, to have been biassed by an interested partiality to the Vizir, to transgress their own, as well as the Company's positive and repeated regulations and orders:—That the extermination of the Rohillas was not necessary, for the recovery of forty lacs of rupees:—And that if it was expedient to make their country a barrier against the Mahrattas, there is reason to believe, that this might have been effected by as easy, and by a less iniquitous, interference of the government of Bengal; which would, at the same time, have preserved the dominion to the *rightful* owners, and exhibited an attentive example of justice, as well as policy, to all India."

Upon this ground, after having joined in a sentence of impunity on the treatment of the Rohillas, the minister declared, that "upon the whole, the conduct of Mr. Hastings, in the transactions now before the House, had been so cruel, unjust, and oppressive, that it was impossible he, as a man of honour or honesty, or having any regard to faith or conscience, could any longer resist; and therefore he had fully satisfied his conscience, that Warren Hastings, in the case in question, had been guilty of such enormities and misdemeanours, as constituted a crime sufficient to call upon the justice of the House to impeach him."

Some article of secret history is necessary to account for this sudden phenomenon.[1] With the conduct of the minister, that too of the House of Commons underwent immediate revolution; the same majority, almost exactly, which had voted that there was not matter of impeachment in the ruin brought upon the Rohillas, voted that there was matter of impeachment in the ruin brought upon the Raja Cheyte Sing. The friends of Mr. Hastings vented expressions of the highest indignation; and charged the minister with treachery; as if he had been previously pledged for their support.[2]

No further progress was made in the prosecution

[1] The cause is variously conjectured; some turn in the cabinet; or in the sentiments of the King, whose zeal for Mr. Hastings was the object of common fame; an increasing dread of unpopularity, from the progress of indignation in the public mind.

[2] The contemporary historian says, "The conduct of the minister on this occasion drew upon him much indecent calumny from the friends of Mr. Hastings. They did not hesitate to accuse him, out of doors, both publicly and privately, of treachery. They declared it was in the full confidence of his protection and support, that they had urged on Mr. Burke to bring forward his charges: and, that the gentleman accused had been persuaded to come to their bar, with an hasty and premature defence. And they did

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of Mr. Hastings during that session of the parliament. But the act of Mr. Pitt for the better government of India was already found in need of tinkering. Mr. Francis, early in the session, had moved for leave to bring in a bill for amending the existing law agreeably to the ideas which he had often expressed. Upon this, however, the previous question was moved, and carried without a division.

In the course of the year 1786, no fewer than three bills for amending the late act, with regard to the government of India, were introduced by the ministers, and passed. The first[1] had for its principal

not scruple to attribute this conduct in the minister to motives of the basest jealousy." Annual Register for the year 1786, chap. vii.—M. Mr. Pitt's view of the case was as little satisfactory to the enemies, as to the friends, of Hastings. He maintained that the Government of India was fully warranted in calling upon the Zemindar of Benares for extraordinary contributions in circumstances of public emergency. To the first demand upon Cheit Sing he entertained no objection, but thought that the subsequent conduct of the Governor-General in imposing a fine of half a million upon the Raja, for his delay in the payment of a contribution of fifty thousand pounds, was oppressive and unjust; but he specifically limited his censure to the exorbitancy of the fine, and expressly protested against any extension of it to the other parts of the charge. His biographer, Gifford, observes, of the feelings with which his speech was received, that while one side wished him to exculpate the Governor-General, the other was dissatisfied with the limitation of his censure to a particular point. His conduct, however, was such as justice demanded, and conscience approved. Life of Pitt, i. 184. See also Tomline's Life of Pitt, i. 215. Where the purport of Mr. Pitt's speech is given in the same manner, "the exorbitant amount of the fine was the only unjust part of the transaction. Cheit Sing's rebellion was not to be vindicated by the plea of resistance to exaction, for he knew not that the fine intended to be levied was exorbitant, Hastings's intention to levy such fine never having been announced to him. The fine was never exacted—very probably never would have been. The intention was merely matter of conversation. Hastings was not pledged to its accomplishment; and after all, therefore, even Mr. Pitt was led to join in charging as a high crime and misdemeanour—an unfulfilled design—a design which would probably never have been carried into effect—and of which nothing could have been known but from Hastings's own honest avowal of having for a time entertained it.—W.

[1] 26 Geo. III. c. 16.

object to free the Governor-General from a dependence upon the majority of his council, by enabling him to act in opposition to their conclusions, after their opinions, together with the reasons upon which they were founded, had been heard and recorded. This idea had been first brought forward by Lord North, in the propositions which he offered as the foundation of a bill, immediately before the dissolution of his ministry. It appears to have been first suggested by Mr. Dundas; and the regulation was insisted upon by Lord Macartney, as indispensable to the existence of a good government in India. It was violently, indeed, opposed by Mr. Francis, Mr. Burke, and the party who were led by them, in their ideas on Indian subjects. The institution, however, bears upon it considerable marks of wisdom. The Council were converted into a party of assessors to the Governor-General, aiding him by their advice, and checking him by their presence. Individual responsibility and unity of purpose were thus united with multiplicity of ideas, and with the influence, not only of eyes, to which every secret was exposed, but of recorded reasons, in defiance of which, as often as the assessors were honest and wise, every pernicious measure would have to be taken, and by which it would be seen that it might afterwards be tried.

The same bill introduced another innovation, which was, to enable the offices of Governor-General and Commander-in-Chief, to be united in the same person. It was undoubtedly of great importance to render the military strictly dependent upon the civil power, and to preclude the unavoidable evils of

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two conflicting authorities. But very great inconveniences attended the measure of uniting in the same person the superintendence of the civil and military departments. In the first place, it raised to the greatest possible degree of concentrated strength the temptations to what the parliament and ministry pretended they had the greatest aversion; the multiplication of wars, and pursuit of conquest. In the next place, the sort of talents, habits, and character, best adapted for the office of civil governor, were not the sort of talents, habits, and character, best adapted for the military functions: nor were those which were best adapted for the military functions, best adapted for the calm and laborious details of the civil administration. And, to omit all other evils, the whole time and talents of the ablest man were not more than sufficient for the duties of either office. For the same man, therefore, it was impossible, not to neglect the one set of duties, in the same degree in which he paid attention to the other.

This bill was arraigned by those who generally opposed the minister, and on the 22nd of March, when, in the language of parliament, it was committed, in other words, considered by the House, when the House calls itself a committee, Mr. Burke poured forth against it one of his most eloquent harangues. It established a despotical power, he said, in India. This, it was pretended, was for giving energy and despatch to the government. But the pretext was false. He desired to know, where that arbitrary government existed, of which dignity, energy, and despatch, were the characteristics. To what had democracy, in all ages and countries, owed most of its

triumphs, but to the openness, the publicity, and strength of its operation."[1]

Mr. Dundas called upon his opponents to inform him, whether it was not possible for despotism to exist in the hands of many, as well as in the hands of one: and he observed, that if the power of the Governor-General would be increased, so would also his responsibility. The answer was just and victorious. It is a mere vulgar error, that despotism ceases to be despotism, by merely being shared. It is an error, too, of pernicious operation on the British constitution. Where men see that the powers of government are shared, they conclude that they are also limited, and already under sufficient restraint. Mr. Dundas affirmed, and affirmed truly, that the government of India was no more a despotism, when the despotism was lodged in the single hand of the Governor-General, than when shared between the Governor and the Council. What he affirmed of increasing the force, by increasing the concentration of responsibility, is likewise so true, that a responsibility, shared, is seldom any responsibility at all. So little was there, in Burke's oratory, of wisdom, if he knew no better, of simplicity and honesty, if he did.

The second of the East India acts of this year[2] was an artifice. It repealed that part of Mr. Pitt's

[1] Cobbett's Parl. Hist. xxv. 1276. In the same speech Mr. Burke said, "What he, from the experience derived from many years' attention, would recommend as a means of recovering India, and reforming all its abuses, was a combination of these three things—a government by law—trial by jury—and publicity in every executive and judicial concern." Ibid. Of these three grand instruments of good government, what he meant is not very clear as to any but the last; of which the importance is, undoubtedly, great beyond expression.

[2] 26 Geo. III. c. 25.

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original act which made necessary the approbation of the King for the choice of a Governor-General. It reserved to the King the power of recall, in which the former was completely included.

The third of the acts of the same year[1] had but one object of any importance; and that was, to repeal the part of Mr. Pitt's original bill, which almost alone appears to have had any tendency to improve the government to which it referred: I mean the disclosure of the amount of the property which each individual, engaged in the government of India, realized in that country. This was too searching a test: And answered the purposes neither of ministers in England, nor of the Company's servants in India.[2]

Nor was this all. There was also, during the course of this year, a fourth bill, granting relief to the East India Company: that sort of relief, for which they had so often occasion to apply, relief in the way of money. A petition from the Company was pre-

[1] 26 Geo. III. c. 57.

[2] The following is a curious testimony to the importance of the clause which was now repealed. Major Scott, the famous agent of Mr. Hastings, in the debate of the 7th of February, 1788, on the impeachment of Sir E. Impey, counteracting the panegyrics which had been pronounced on Mr. Francis, said, "Before I join in applauding the integrity of the Hon. Gen., I require it to be proved *by the only possible way in which his integrity can possibly be proved.* Let him come fairly, boldly, and honestly forward, as Lord Macartney has done; let him state that he left England in debt, that he was six years in India, that his expenses at home and abroad were so much, and his fortune barely the difference between the amount of his expenses and the amount of his salary. When the Hon. Gent. shall have done this, I will join the committee of impeachment with cheerfulness, in pronouncing Mr. Francis to be one of the honestest men that ever came from Bengal. But until he shall submit to *this only true test* of his integrity, I shall pay no attention to the animated panegyrics of his friends." Cobbett's Parl. Hist. xxvi. 1425, I wish I could have availed myself of this testimony, without repeating the surmise of a man who would not have confined himself to surmise againt Mr. Francis, had he had any thing stronger to produce.

sented; and the subject was discussed in the House of Commons, on the 9th, and 26th of June. The act[1] enabled them to raise money by the sale of a part, to wit, 1,207,559*l.* 15*s.* of the 4,200,000*l*, which they had lent to the public; and also, by adding 800,000*l.* in the way of subscription to their capital stock.

On the first day of the following session, which was the 23rd of January, 1787, Mr. Burke announced, that he should proceed with the prosecution of Mr. Hastings, on the first day of the succeeding month. The business, during this session, was carried through its first and most interesting stage. The House of Commons reviewed the several articles of charge; impeached Mr. Hastings at the bar of the House of Peers; and delivered him to that judicatory for trial. Of the proceedings at this stage it is necessary for me to advert to only the more remarkable points.

On the 7th of February, the charge relating to the resumption of the jaghires or lands of the Princesses of Oude, the seizure of their treasure, and the connected offences, was exhibited by Mr. Sheridan in a speech which powerfully operated upon the sympathy of the hearers, and was celebrated as one of the highest efforts of English eloquence. On this subject Mr. Pitt took a distinction between the landed estates, and the treasures. For depriving the Begums, of their estates, he could conceive that reasons might exist, although peculiar delicacy and forbearance were due on the part of the English, who were actually the guarantees to the Princesses for the

[1] 26 Geo. III. c. 62.

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secure possession of those estates. But the confiscation of their treasures, he thought an enormity, altogether indefensible and atrocious; and the guilt of that act was increased by stifling the order of the Court of Directors, which commanded the proceedings against the Princesses to be revised. The plunder of the Chief of Furruckabad, a dependant, also, of the Nabob, whom the English were bound to protect, formed a part of the transactions to which the Governor-General became a party by the treaty of Chunar. It was made a separate article of charge. And, in the matter of that, as well as the preceding article, it was voted by large majorities, that high crimes and misdemeanours were involved. Mr. Pitt observed, that the conduct of the Governor-General, in receiving a present of enormous value from the Nabob, at the time when he let him loose to prey upon so many victims, was not justified by the pretence of receiving it for the public service, in which no exigence existed to demand recurrence to such a resource: "it could be accounted for by nothing but corruption."

In the course of these proceedings, Mr. Burke thought it necessary to call the attention of the House to the difficulties under which the prosecution laboured in regard to evidence. The late Governor-General, as often as he thought proper, had withheld, mutilated or garbled the correspondence which he was bound to transmit to the East India House. Nor was this all. Those whose duty it was to bring evidence of the charges were often ignorant of the titles of the papers for which it was necessary to call; and papers, however closely connected with the sub-

ject, were withheld, if not technically included under the title which was given. He himself, for example, had moved for the Furruckabad papers, and what he received under that title, he concluded, were the whole; but a motion had been afterwards made, by another member, for the Persian correspondence, which brought forth documents of the greatest importance. To another circumstance it befitted the House to advert. The attorney of the East India Company, in vindication of whose wrongs the prosecution was carried on, was (it was pretty remarkable) the attorney, likewise, of Mr. Hastings; and while the House were groping in the dark, and liable to miss what was of most importance, Mr. Hastings and his attorney, to whom the documents in the India House were known, might, on each occasion, by a fortunate document, defeat the imperfect evidence before the House, and laugh at the prosecution.

On the charge, that expense had been incurred by Mr. Hastings for making dependants and creating a corrupt influence, brought forward on the 15th of March, Mr. Pitt selected three particulars, as those alone which appeared to him, in respect to magnitude, and evidence of criminality, to demand the penal proceedings of parliament. These were, the contract for bullocks in 1779; the opium contract in 1780;[1] and the extraordinary emoluments bestowed

[1] There were several pecuniary transactions with individuals, such as a contract for supplying the army with bullocks, a contract for feeding elephants, an agency for the supply of corn, a contract for the Company's opium, which were laid hold of by the accusers of Mr. Hastings, as either not having been performed agreeably to the rules and orders of the service, or in some way implying corruption on the part of the Governor-General,

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on Sir Eyre Coote. In the first there were not only, he said, reprehensible circumstances, but strong marks of corruption: while the latter transaction involved in it almost every species of criminality; a violation of the faith of the Company, a wanton abuse of power against a helpless ally, a misapplication of the public property, and disobedience to his superiors, by a disgraceful and wicked evasion.[1]

On the 2nd of April, when the report of the Committee on the articles of charge was brought up, it was proposed by Mr. Pitt, that, instead of voting whether the House should proceed to impeachment, a preliminary step should be interposed, and that a committee should be formed to draw up articles of impeachment. His reason was, that on several of the particulars, contained in the articles of charge, he could not vote for the penal proceeding proposed, while he thought that on account of others it was clearly required. A committee might draw up articles of impeachment, which would remove his objections, without frustrating the object which all parties professed to have in view. After some little opposition, this suggestion was adopted. Among the

and thence included among the subjects of criminal charge. As the indications of criminality in these transactions appeared to me to fall short of proof; and as they were matters of that degree of detail, to which the limits of history do not allow it to descend, no account of them is included in the narrative of Mr. Hastings's Indian Administration.

[1] The extra allowances paid to Sir E. Coote were charged to the Nawab Vizir whilst the General was in Oude, and they were continued to him after his return to Bengal, and embarkation for Madras. Hastings admits the facts in his defence. He no doubt submitted to these arrangements to keep Sir E. Coote in good humour. And they were chargeable with indifference to expenditure, but not with the criminality imputed by the minister.—W.

names presented for the Committee was that of Mr. Francis. Objection to him was taken, on the score of a supposed enmity to the party accused; and he was rejected by a majority of 96 to 44.

On the 25th of the month, the articles of impeachment were brought up from the Committee by Mr. Burke. They were taken into consideration on the 9th of May. The formerly celebrated, then Alderman, Wilkes, was a warm friend of Mr. Hastings; and strenuously maintained that the prosecution was unjust. He said, what was the most remarkable thing in the debate, that it was the craving and avaricious policy of this country, which had, for the purpose of getting money to satisfy this inordinate appetite, betrayed Mr. Hastings into those of his measures for which a defence was the most difficult to be found. The remark had its foundation in truth; and it goes pretty far in extenuation of some of Mr. Hastings's most exceptionable acts. The famous Alderman added, that a zeal for justice, which never recognises any object that takes any thing from ourselves, is a manifest pretence. If Mr. Hastings had committed so much injustice, how disgraceful was it to be told, that not a single voice had yet been heard to cry for restitution and compensation to those who had suffered by his acts? The stain to which the reformed patriot thus pointed the finger of scorn, is an instance of that perversion of the moral sentiments to which nations by their selfishness are so commonly driven, and which it is therefore so useful to hold up to perpetual view. Among individuals, a man so corrupt could scarcely be formed as to cry out with vehemence against the cruelty of a plunder, perpetrated for his

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benefit, without a thought of restoring what by injustice he had obtained.[1] There was in this debate another circumstance worthy of notice ; that Mr. Pitt pronounced the strongest condemnation of those who endeavoured to set in balance the services of Mr. Hastings against the crimes, as if the merit of the one extinguished the demerit of the other. This was an attempt, he said, to compromise the justice of the country. Yet at a date no further distant than the preceding session, Mr. Pitt had joined with Mr. Dundas, when that practical statesman urged the

[1] The objection was most just. Not even Burke proposed that the money said to have been extorted from the Vizir, from the Begums, from Fyzoolla Khan, should be restored to them, nor that Corah and Allahabad should be redeemed from the Vizir, and given back to Shah Alem, nor that Cheit Sing should be replaced in his Zemindary of Benares. As long as the Company reaped the advantages of these measures, as long as the nation kept firm hold of the wealth and power derived from Indian territory acquired by such means, as long as both appropriated and retained the plunder that their agents laid at their feet, it was monstrous inconsistency to denounce and punish those agents as plunderers and spoilers. At the same time, irrrcfutable as is the argument, it was not employed by Wilkcs. The speech of the Alderman as reported in the History of Parliament, and as published separately, although a most reasonable and manly vindication of Hastings, does not contain the passage cited in the text. Something like it occurs in the speech of Mr. Nathaniel Smith, the Chairman of the Court of Directors, who had been throughout opposed to the policy of Hastings, and had strenuously advocated his recall. He ascribed thc origin of all the evils that had occurred to the financial embarrassments of thc Company, consequent upon "the inconsiderate eagerness of the ministers after immediate gain from the newly-acquired revenues of India, whilst every other object was neglected." Mr. Dundas also remarked, that "no intention being to this day significd from any quarter to rcfund the money received by Warren Hastings, (from the native princes,) with what propriety could he be impeached for procuring it ? These are the only traces of the argument found in the Report of the Debate, to which it seems likely, therefore, Mr. Mill had not referred, contenting himself with the abstract of the speeches contained in the Annual Register for 1787, c. vi., where the words of the text, with others to the same purport, are givcn as the essence of Wilkcs's speech. Parliamentary History, xxvi, 1092. Speech of Mr. Wilkes, 9th May, 1787.—W.

merit of the latter part of Mr. Hastings's administrations, as reason to justify himself for not following up by prosecution the condemnations which he had formerly pronounced.[1]

The articles of impeachment, which were now brought up from the Committee, received the approbation of the House; a vote for impeaching Mr. Hastings was passed; the impeachment was carried by Mr. Burke to the bar of the Lords; Mr. Hastings was brought to that bar; admitted to bail; and allowed one month, and till the second day of the following session of parliament, to prepare for his defence.

On the 24th of April, 1787, Sir Gilbert Elliot, whose intention had been delayed by other business which was before the House, gave notice of a day on which he intended to bring forward the subject of the impeachment of Sir Elijah Impey, but on account of the approaching termination of that session was induced to postpone it till the next.

On the 12th of December, after an introductory speech, Sir Gilbert exhibited his articles of charge. They related to five supposed offences, regarding, 1. The catastrophe of the Raja Nuncomar; 2. The Patna cause; 3. The Cossijurah cause; 4. The office of Sudder Dewannee Adaulut; 5. The affidavits at Lucknow. They were referred to a Committee of the whole House, and on the 4th of February, 1788,

[1] This is not quite fairly stated: the argument used by Pitt in the first debate, was that in judging of an administration, its character should rest upon its general merits, and should not be condemned, because every part of it was not equally defensible. His present assertion was, that if great crimes could be proved, they were not to be overlooked, because there were great merits. To such a "set off" he objected, and so did Hastings; but errors and demerits are not necessarily 'great crimes.'—W.

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Sir Elijah Impey was heard in his defence. What he advanced was confined to the subject of the first charge, his concern in the death of Nuncomar. Further discussions took place, on the same subject, on the 7th and 8th. On the 11th and 26th of February, and on the 16th of April, witnesses were examined at the bar, and more or less of discussion accompanied. On the 28th of April, on the 7th and 9th of May, Sir Gilbert Elliot summed up and enforced the evidence on the first of the charges, and on the last of these days moved, "That the Committee, having considered the first article, and examined evidence thereupon, is of opinion, that there is ground of impeachment of high crimes and misdemeanours against Sir Elijah Impey, upon the matter of the said article." After a debate of considerable length, the motion was negatived, by a majority of seventy-three to fifty-five. An attempt was made to proceed with the remaining articles on the 27th of May; but the business was closed, by a motion to postpone it for three months. In this affair, the lawyers, as was to be expected, supported the judge. The minister, Mr. Pitt, distinguished himself by the warmth with which he took up the defence of Sir Elijah from the beginning of the investigation, and by the asperity with which he now began to treat Mr. Francis.[1]

The operation of Mr. Pitt's new law produced occasion for another legislative interference. In passing that law, two objects were very naturally pursued. To avoid the imputation of what was represented as the heinous guilt of Mr. Fox's bill, it

[1] See Parliamentary Hist. *ad dies.*

was necessary, that the principal part of the power should *appear* to remain in the hands of the Directors, For ministerial advantage, it was necessary, that it should in *reality* be all taken away.

Minds drenched with terror are easily deceived. Mr. Fox's bill threatened the Directors with evils which to them, at any rate, were not imaginary. And with much art, and singular success, other men were generally made to believe, that it was fraught with mischief to the nation.

Mr. Pitt's bill professed to differ from that of his rival, chiefly in this very point, that while the one destroyed the power of the Directors, the other left it almost entire. The double purpose of the minister was obtained, by leaving them the forms, while the substance was taken away. In the temper into which the mind of the nation had been artfully brought, the deception was easily passed. And vague and ambiguous language was the instrument. The terms, in which the functions of the Board of Control were described, implied, in their most obvious import, no great deduction from the former power of the Directors. They were susceptible of an interpretation which took away the whole.

In all arrangements between parties of which the one is to any considerable degree stronger than the other, all ambiguities in the terms are sooner or later forced into that interpretation which is most favourable to the strongest party, and least favourable to the weakest. The short-sighted Directors understood not this law of human nature; possibly saw not, in the terms of the statute, any meaning beyond what they desired to see; that which the authors of

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the terms appeared, at the time, to have as ardently at heart as themselves.

The Directors had not enjoyed their imaginary dignities long, when the Board of Control began operations which surprised them; and a struggle which they were little able to maintain, immediately ensued. The reader is already acquainted with the disputes which arose on the payment of the debts of the Nabob of Arcot; and on the appointment of a successor to Lord Macartney, as Governor of Fort St. George.

Lieutenant-Colonel Ross had been guilty of what the Directors considered an outrageous contempt of their authority. In July, 1785, they dictated a severe reprimand. The Board of Control altered the despatch, by striking out the censure. The dignity of the Directors was now touched in a most sensible part. "The present occasion," they said, "appeared to them so momentous, and a submission on their part so destructive of all order and subordination in India, that they must take the liberty of informing the Right Honourable Board that no despatch can be sent to India which does not contain the final decision of the Directors on Lieutenant-Colonel Ross." The Board of Control, it is probable, deemed the occasion rather too delicate for the scandal of a struggle. It could well afford a compromise: and crowned its compliance, in this instance, with the following comprehensive declaration, "We trust, however, that by this acquiescence, it will not be understood that we mean to recognise any power in you to transmit to India either censure or approbation of the conduct of any

servant, civil or military, exclusive of the control of this Board:" that is to say, they were not to retain the slightest authority, in any other capacity than that of the blind and passive instruments of the superior power.

These cases are a few, out of a number, detached for the purpose of giving greater precision to the idea of the struggle which for a time the Court of Directors were incited to maintain with the Board of Control. At last an occasion arrived which carried affairs to a crisis. In 1787, the democratical party in Holland rose to the determination of throwing off the yoke of the aristocratical party. As usual, the English government interfered, and by the strong force of natural tendency, in favour of the aristocratical side. The French government, with equal zeal, espoused the cause of the opposite party; and a war was threatened between England and France. The Directors took the alarm; petitioned for an augmentation of military force; and four royal regiments, destined for that service, were immediately raised. Happily the peace with France was not interrupted. The Directors were of opinion that, now, the regiments were not required. The Board of Control, however, adhered to its original design. The expense of conveying the troops, and the expense of maintaining them in India, would be very great. The finances of the Company were in their usual state of extreme pressure and embarrassment. This addition to their burdens the Directors regarded as altogether gratuitous; and tending to nothing but the gradual transfer of all military authority in India from the Company to the minister. Their ground

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appeared to be strong; by an act which passed in 1781, they were exempted from the payment of any troops which were not sent to India upon their requisition. They resolved to make a stand, refusing to charge the Company with the expense of the ministerial regiments. The Board of Control maintained that, by the act of 1784, it received the power, upon the refusal of the Company to concur in any measure which it deemed expedient for the government of India, to order the expense of the measure to be defrayed out of the territorial revenues. The Directors, looking to the more obvious, and, at the time of its passing, the avowed meaning of the act, which professed to confirm, not to annihilate the "chartered rights of the Company," denied the construction which was now imposed upon the words. They took the opinion of several eminent lawyers, who, looking at the same points with themselves, rather than the unlimited extent to which the terms of the act were capable of stretching, declared that the pretensions of the ministers were not authorized by law.

The question of the full, or limited, transfer of the government of India, was to be determined. The minister, therefore, resolved to carry it before a tribunal on whose decision he could depend. On the 25th of February, 1788, he moved the House of Commons for leave to bring in a bill. When the meaning of an act is doubtful, or imperfect, the usual remedy is a bill to explain and amend. Beside the confession of error which that remedy appears to imply, a confession not grateful to ministerial sensibility, something is understood to be altered by that

proceeding in the matter of the law. Now, the extraordinary powers, to which the claim was at this time advanced, might, it was probable, be more easily allowed, if they were believed to be old powers, already granted, than new powers, on which deliberation, for the first time, was yet to be made. For this, or for some other reason, the ministers did not bring in a bill to explain and amend their former act, but a bill to declare its meaning. The business of a legislature is to *make* laws. To *declare the meaning of the laws,* is the business of a judicatory. What, in this case, the ministers therefore called upon the parliament to perform, was not an act of legislation, but an act of judicature. They called upon it successfully, of course, to supersede the courts of justice, and to usurp the decision of a question of law; to confound, in short, the two powers, of judicature and legislation.

In the speech, in which Mr. Pitt moved for leave to bring in the bill by means of which this act of judicature was to be performed, it was, he declared, incomprehensible to him, that respectable men of the law should have questioned that interpretation of the statute of 1784 for which he contended. "In his mind nothing could be more clear, than that there was no one step that could have been taken previous to passing the act of 1784, by the Court of Directors, touching the military and political concerns of India, and also the collection, management, and application of the revenues of the territorial possessions, that the Commissioners of the Board of Control had not now a right to take by virtue of the powers and authority vested in them by the act of 1784."

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If every power which had belonged to the Directors, might be exerted by the Board of Control, against the consent of the Directors; but the Directors could not exercise the smallest political power, against the consent of the Board of Control, it is evident that all political power was taken away from the Directors. The present declaration of Mr. Pitt, with regard to the interpretation of his act, was, therefore, directly contradictory to his declarations in 1783, when he professed to leave the power of the Directors regulated, rather than impaired.

Mr. Dundas, the President of the Board of Control, spoke a language still more precise. "It was the meaning, he affirmed, of the act of 1784, that the Board of Control, if it chose, might apply the whole revenue of India to the purposes of its defence, without leaving to the Company a single rupee."

The use to which the minister was, in this manner, about to convert the parliament, the opponents of the bill described as full of alarm. To convert the makers of law into the interpreters of law, was, itself, a circumstance in the highest degree suspicious; involved in it the destruction of all certainty of law, and by necessary consequence of all legal government. To convert into a judicature the British parliament, in which influence made the will of the minister the governing spring, was merely to erect an all-powerful tribunal, by which every iniquitous purpose of the minister might receive its fulfilment. The serpentine path, which the minister had thus opened, was admirably calculated for the introduction of every fraudulent measure, and the accomplishment of every detestable design. He finds an object

with a fair complexion; lulls suspicion asleep by liberal professions; frames a law in terms so indefinite as to be capable of stretching to the point in view; watches his opportunity; and, when that arrives, calls upon an obedient parliament, to give his interpretation to their words. By this management, may be gained, with little noise or observation, such acquisitions of power, as, if openly and directly pursued, would at least produce a clamour and alarm.

When, however, the opponents of the bill contended that the act did not warrant the interpretation which the legislature was now called upon to affix; they assumed a weaker ground. They showed, indeed, that the act of 1784, was so contrived as to afford strong appearances of the restricted meaning from which the minister wished to be relieved; such appearances as produced general deception at the time;[1] but it was impossible to show, that the terms of the act were not so indefinite, as to be capable of an interpretation which involved every power of the Indian government.

It was indeed true, that when a law admits of two interpretations, it is the maxim of Courts of law, to adopt that interpretation which is most in favour of the party against whom the law is supposed to operate. In parliament, the certain maxim is, to adopt that interpretation which is most favourable to the minister.

[1] Mr. Baring said, that "when the bill of 1784 was in agitation, it had not been intimated to the Directors, that the bill gave any such power to the Commissioners of Control, as was now contended for: if they had so understood it, they would not have given their support to a bill, that tended to annihilate the Company, and deprive them of all their rights and powers." Parl. Hist. xxvii. 67.

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The memory of the minister was well refreshed with descriptions of the dreadful effects which he said would flow from the powers transferred to the minister by the bill of Mr. Fox. As the same or still greater powers were transferred to the minister by his own, so they were held in a way more alarming and dangerous. Under the proposed act of Mr. Fox, they would have been avowedly held. Under the act of Mr. Pitt, they were held in secret, and by fraud. Beside the difference, between powers exercised avowedly, and powers exercised under a cover and by fraud, there was one other difference between the bill of Mr. Fox and that of Mr. Pitt. The bill of Mr. Fox transferred the power of the Company to commissioners appointed by parliament. The bill of Mr. Pitt transferred them to commissioners appointed by the King. For Mr. Pitt to say that commissioners chosen by the parliament were not better than commissioners chosen by the King, was to say that parliament was so completely an instrument of bad government, that it was worse calculated to produce good results than the mere arbitrary will of a King. All those who asserted that the bill of Mr. Pitt was preferable to that of Mr. Fox, are convicted of holding, however they may disavow, that remarkable opinion.

The declaratory bill itself professed to leave the commercial powers of the Company entire. Here, too, profession was at variance with fact. The commercial funds of the Company were blended with the political. The power of appropriating the one, was the power of appropriating the whole. The military and political stores were purchased in Eng-

land with the produce of the commercial sales. The Presidencies abroad had the power of drawing upon the domestic treasury to a vast amount. The bill, therefore, went to the confiscation of the whole of the Company's property. It was a bill for taking the trading capital of a Company of merchants, and placing it at the disposal of the ministers of the crown.

Beside these objections to the general powers assumed by the bill, the particular measure in contemplation was severely arraigned. To send out to India troops, called the King's, when troops raised by the Company in India could be so much more cheaply maintained, was an act on which the mischievousness of all unnecessary expense stamped the marks of the greatest criminality. That criminality obtained a character of still deeper atrocity, when the end was considered, for which it was incurred. It was the increase of crown patronage, by the increase of that army which belonged to the crown. And what was the use of that patronage? To increase that dependence upon the crown which unites the members of the House of Commons, in a tacit confederacy for their own benefit, against all political improvement.

Another objection to the troops was drawn from what was called the doctrine of the constitution: that no troops should belong to the King, for which parliament did not annually vote the money.

Some of the Directors professed, that though the powers, darkly conveyed by the act of 1784, were not altogether concealed from them at the time; they had given their consent to the bill, from the confidence

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they had in the good intentions of the ministry; whom they never believed to be capable of aiming at such extravagant powers as those which they now assumed.

This body of arguments was encountered by the minister, first with the position that no interpretation of a law was to be admitted, which defeated its end. But what was the end of this law of his, was a question, from the solution of which he pretty completely abstained. If it was the good government of India; he did not attempt the difficult task of proving that to *this* end the powers for which he contended were in any degree conducive. If it was the increase of ministerial influence; of their conduciveness to this end, no proof was required.

To the charge that he had introduced his act, under professions of not adding to the influence of the Crown, nor materially diminishing the powers of the Company; professions which his present proceedings completely belied; he made answer by asserting, broadly and confidently, that it was the grand intention of the act of 1784 to transfer the government of India from the Court of Directors to the Board of Control; and that he had never held a language which admitted a different construction.

Mr. Dundas denied, what was asserted on the part of the Company, that for some time after the passing of the act, the Board of Control had admitted its want of title to the powers which now it assumed. The Company offered to produce proof of their assertion at the bar of the House. The ministers introduced a motion, and obtained a vote that they

should not be allowed. No further proof of the Company's assertion, according to the rules of practical logic, could be rationally required.

To show that the Board of Control had exercised the powers which it was thus proved that they had disclaimed, Mr. Dundas was precipitated into the production of facts, which were better evidence of other points than that to which he applied them. He made the following statement: that in 1785, the resources of the Company were so completely exhausted, as to be hardly equal to payment of the arrears which were due to the army: that the troops were so exasperated by the length of those arrears, as to be ripe for mutiny: and that the Board of Control sent orders to apply the Company's money to the satisfaction of the troops, postponing payments of every other description. In this appropriation, however, was it not true, that the Directors, though reluctantly, did at last acquiesce?

Mr. Dundas further contended, that without the powers in question, namely, the whole powers of government, the Board of Control would be a nugatory institution.

If the whole powers of government, however, were necessary for the Board of Control, what use was there for another governing body, without power? This was to have two governing bodies; the one real, the other only in show. Of this species of duplication the effect is, to lessen the chances for good government, increase the chances for bad; to weaken all the motives for application, honesty, and zeal in the body vested with power; and to furnish it with an ample screen, behind which its love of

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ease, power, lucre, vengeance, may be gratified more safely at the expense of its trust.

To crown the ministerial argument, Mr. Dundas advanced, that the powers which were lodged with the Board of Control, how great soever they might be, were lodged without danger, because the Board was responsible to parliament. To all those who regard the parliament as substantially governed by ministerial influence, responsibility to parliament means responsibility to the minister. The responsibility of the Board of Control to parliament, meant, according to this view of the matter, the responsibility of the ministry to itself. And all those, among whom the authors of the present bill and their followers were to be ranked as the most forward and loud, who denounced parliament as so corrupt, that it would have been sure to employ, according to the most wicked purposes of the minister, the powers transferred to it by the bill of Mr. Fox, must have regarded as solemn mockery, the talk, whether from their own lips, or those of other people, about the responsibility of ministers to parliament.

Meeting the objections to the sending of King's troops, Mr. Pitt confessed his opinion, that the army in India ought all to be on one establishment; and should all belong to the King; nor did he scruple to declare, that it was in preparation for this reform that the troops were now about to be conveyed.

With regard to the doctrine, called constitutional, about the necessity of an annual vote of parliament for the maintenance of all troops kept on foot by the

King, he remarked, that the Bill of Rights, and the Mutiny Act, the only positive laws upon the subject, were so vague and indefinite (which is very true) as to be almost nugatory; that one of the advantages attending the introduction of the present question would be, to excite attention and apply reform to that important but defective part of the constitutional law; and that he was ready to receive from any quarter the suggestion of checks upon any abuse to which the army, or the patronage of India, might appear to be exposed.

If any persons imagined, that this language, about the reform of the constitutional law, would lead to any measures for that desirable end; they were egregiously deceived. Besides, was it any reason, because the law which pretended to guard the people from the abuse of a military power was inadequate to its ends, that therefore a military force should now be created, more independent of parliament than any which, under that law, had as yet been allowed to exist? That any danger, however, peculiar to itself, arose from this army, it was, unless for the purpose of the moment, weak to pretend.

Notwithstanding the immense influence of the minister, so much suspicion was excited by the contrast between his former professions, and the unlimited power at which he now appeared to be grasping, that the bill was carried through the first stages of its progress, by very small majorities. With a view to mitigate this alarm, Mr. Pitt proposed that certain clauses should be added; the first, to limit the number of troops, beyond which the orders of the Board of Control should not be

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obligatory on the East India Company; the second, to prevent the Board from increasing the salary attached to any office under the Company, except with the concurrence of Directors and Parliament; the third, to prevent the Board, except with the same concurrence, from ordering any gratuity for services performed; the fourth, to oblige the Directors annually to lay before parliament the account of the Company's receipts and disbursements.

The annexation of these clauses opened a new source of argument against the bill. A declaratory bill, with enacting clauses, involved, it was said, an absurdity which resembled a contradiction in terms. It declared that an act had a certain meaning; but a meaning limited by enactments yet remaining to be made. It declared that a law without limiting clauses, and a law with them, was one and the same thing. By the bill before them, if passed, the House would declare that certain powers had been vested in the Board of Control, and yet not vested, without certain conditions, which had not had existence. Besides, if such conditions were now seen to be necessary to prevent the powers claimed under the act from producing the worst of consequences, what was to be thought of the legislature for granting such dangerous powers? It was asked, whether this was not so disgraceful to the wisdom of parliament, if it saw not the danger; so disgraceful to its virtue, if it saw it without providing the remedy, as to afford a proof, that no such powers in 1784 were meant by the legislature to be conveyed?

A protest in the upper house, signed Portland,

Carlisle, Devonshire, Portchester, Derby, Sandwich, Cholmondely, Powis, Cardiff, Craven, Bedford, Loughborough, Fitzwilliam, Scarborough, Buckinghamshire,—fifteen lords—exhibits, on the subject of the patronage, the following words: "The patronage of the Company—and this seems to be the most serious terror to the people of England—the Commissioners of Control enjoy in the worst mode, without that responsibility which is the natural security against malversation and abuse. They cannot immediately appoint; but they have that weight of recommendation and influence, which must ever inseparably attend on substantial power, and which, in the present case, has not any where been attempted to be denied.—Nor is this disposal of patronage without responsibility the only evil that characterizes the system. All the high powers and prerogatives with which the commissioners are vested, they may exercise invisibly—and thus, for a period at least, invade, perhaps, in a great measure finally baffle, all political responsibility; for they have a power of administering to their clerks and other officers an oath of secrecy framed for the occasion by themselves; and they possess in the India House the suspicious instrument of a Secret Committee, bound to them by an oath."

CHARGES AGAINST WARREN HASTINGS.

PREFERRED ON THE 4TH APRIL, 1786.

1. That in contradiction of the positive orders of the Court of Directors, Warren Hastings furnished the Nabob of Oude, for a stipulated sum of money, to be paid to the East India Company, with a body of troops, for the declared purpose of "thoroughly extirpating the nation of the Rohillas."

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2 That in violation of the agreement under which the English Government held of Shah Alem, the Dewannee of Bengal, Behar, and Orissa, and by which they engaged to pay him an annual sum of money, and to secure to him the possession of the districts of Corah and Allahabad, Warren Hastings had seized upon those districts, and sold them to the Nabob of Oude, appropriated the money to the Company's use, and withheld the annual tribute promised to the King.

3. That in violation of solemn agreements, by which Cheit Sing, the Raja of Benares, was acknowledged as an independent prince, liable only to a fixed annual contribution, the amount of which it was declared should on no account, and at no time whatever, be exceeded; Warren Hastings, on the plea of war with France, extorted from the Raja repeated augmentations of his annual contributions, and upon his inability to discharge fresh demands, forcibly dispossessed him of his hereditary dominions, and drove him into exile.

4. That contrary to justice and equity, and the security of property, as well as to public faith, and the sanction of the Company's guarantee, Warren Hastings authorized the Nabob of Oude, a dependant or vassal of the East India Company, and over whom he possessed an entire and absolute command, to seize upon and confiscate to his own profit, the landed estates of his mother and grandmother, his kindred and principal nobility, as also the personal property of the two princesses; and that in the enforcing of these measures against the latter, they, with other females of the royal family, their servants and dependants, were treated with atrocious indignity and barbarity, in obedience to his injunctions and commands.

5. That by frequent changes in his policy, with regard to the Nawab of Furruckabad, at one while placing a British Resident in the province, at another restoring it to the oppressive superintendence of the Nawab of Oude; he had been the cause of subjecting the person and kindred of the Nawab of Furruckabad to great suffering and distress, and the whole province to misgovernment and desolation.

6. That a Hindoo prince, the Raja of Lahore, having been dispossessed of his territory by the Nawab of Oude, made frequent incursions into his former country, to the constant occurrence of disturbances, and effusion of blood; to prevent the recurrence of which, it was proposed by the officer in command, to grant the Raja a pension—that Hastings omitted to order any relief to the Raja; and that instead of any provision for the Raja, to which in equity and humanity he was entitled, a price was set upon his head, and he was hunted down and killed.

7. That in disregard of the orders of the Court of Directors, that all contracts should be publicly advertised, and certain contracts for the army should be annually renewed by public advertisement, W. Hastings did from time to time accept of private proposals, and for periods of three and five years, many of which contracts were notoriously made on disadvantageous conditions, to the great waste of the public property, and with the view of forming a party to support his measures; with which view also he created new offices, and lavished on various individuals excessive salaries and emoluments, especially on Sir Eyre Coote, the Commander-

in-Chief; and that in consequence of this profusion, the cost of the civil establishment alone was raised from 205,399*l.* per annum in 1776, to 927,945*l.* in 1783.

8. That notwithstanding his covenants and engagement to receive no presents, fees, or gratuities, whatever, sundry charges had been brought against Hastings for gifts or presents corruptly taken by him, some of which charges having been brought against him before the Council were never denied or disputed; that of those, of which explanations had been promised by him, the explanations were never submitted to the Court of Directors; that, after a long interval, he informed them of his having received money from the Prince of Oude, as well as from other persons, especially Raja Nuncomar, Munny Begum, Khan Jehan Khan, and Raja Cheit Sing, of which there is no proof that the sums so received ever were, as he asserts, applied to the public service; and that his description of his own conduct in these matters, is marked with gross evasions, and palpable prevarication and deceit, and confirms all former evidence of his having constantly used the influence of his station for the most scandalous, illegal, and corrupt purposes.

9. That after Warren Hastings had signified his intention of resigning the Government, in consequence of which General Clavering was appointed his successor, he refused to relinquish his situation to General Clavering, and in so doing, was guilty of a breach of faith, and of an act of disrespect to the Court of Directors and his Majesty's Ministers, tending to bring their authority into contempt, and that such refusal was an act of injustice to General Clavering, and was, *or might have been,* to Mr. Wheler, and was an act of signal treachery to Laughlan Macleane, Esq., as also to Mr. Vansittart and Mr. Stewart: "and the said refusal was prejudicial to the affairs of the servants of the Company in India, by shaking the confidence to be placed in their agents by those persons with whom it might be for their interests to negotiate on matters of importance, and by thus subjecting the communication of persons abroad with those at home to difficulties unknown before." (This to be matter of solemn impeachment!)

ADDITIONAL CHARGES, 12TH APRIL.

10. That Warren Hastings did grant to the Surgeon-General a contract for three years for defraying every kind of hospital and medicinal expense.

11. That he persuaded the Council to enter into a contract with Archibald Frazer, Esq., for the repairs of the pools and tanks of Burdwan, at a fixed rate for four years.

12. That he granted to Stephen Sullivan, son of Lawrence Sullivan, Chairman of the Court of Directors, a contract for four years for the provision of opium; that in order to pay for the opium so provided, he borrowed large sums at an interest of 8 per cent., at a time when he declared the drug could not be exported with profit, and yet he sent it to China, which was an act of additional criminality, as he knew that importation of opium into China was prohibited by the Chinese; that a great loss ensued, and that every part of the transaction was a disobedience of orders and continued breach of trust.

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13. That Mr. R. J. Sullivan, having on false pretexts retired from the Madras service, entered into that of the Nabob of the Carnatic, and was received by Hastings as the agent of the Nabob, and was appointed by him Resident at Arcot. And that when this was revoked by the Court of Directors, who dismissed Mr. Sullivan from their service, Warren Hastings, in defiance of their orders and authority, recommended him to be employed as ambassador at the Court of the Nizam.

14. That notwithstanding the Rana of Gohud, agreeably to stipulations previously made with the British Government, was a party to the treaty of peace concluded with Madajee Sindia, yet immediately afterwards Sindia was allowed to make war upon the Rana, and dispossess him of his territory, without any interference on the part of the English Government in behalf of their ally, thereby forfeiting the honour, and injuring the credit, of the British nation in India.

15. That notwithstanding his own admissions of the declining resources of the country, Warren Hastings enforced a settlement of the revenue for five years, at a higher rate than had ever been exacted before. That he next, in violation of the hereditary rights of the Zemindars, the sole proprietors of the lands in India, let the lands in farm for five years; and in contradiction to positive orders of the Court of Directors, that no farm should exceed the annual amount of one lac of rupees, and that no native servant of a collector of revenue should hold land in farm, or become security for other farmers, he allowed his own Banian to farm lands to the extent of thirteen lacs of rupees per annum; and that by repeated alterations in the system of managing the revenues, he did harass and afflict the inhabitants, and destroy all security to private property, and all confidence in the good faith, principles, and justice, of the British Government.

16. That he was guilty of high offence and misdemeanour in his various transactions with the Nabob of Oude; or in deceits, prevarications, contradictions, malicious accusations, fraudulent concealments, and compelled discoveries, in secret, corrupt and prodigal dispositions of the revenues of Oude; in breach of faith to the Nabob in continuing expensive establishments under a private agent of his own, (Major Palmer,) after he had agreed to remove the agent of the Company.

17. That after a long course of public service, in which his merits had been repeatedly acknowledged by the Government of Bengal, Mohammed Reza Khan, Naib Subah of Bengal, was arrested by the private orders of Warren Hastings, and brought prisoner to Calcutta, where he was long ignominiously and needlessly detained without trial. That his authority as guardian of the Nawab of Bengal, and manager of his affairs, was transferred to Munny Begum, a woman of the lowest and most discreditable order of society, notoriously incapable of the duties thus assigned to her. That after Mohammed Reza Khan was acquitted of every charge against him, and was restored to his offices by order of the Court of Directors, Warren Hastings again removed him, on the pretext that the Nabob was competent to manage his own affairs; and when the Court again insisted upon the restitution of Mohammed Reza Khan to an authority rendered necessary

by the incapacity of the Nawab, he long resisted their orders, his support of Munny Begum having been secured by corrupt means. That in other matters affecting the Nabob, he also exercised undue and mischievous interference, by which the affairs of the Court of Murshedabad had fallen into extreme disorder and distress.

18. That in contradiction to the safe, just, and honourable policy of the Court of Directors, which whilst it forbad their government engaging in any measure for the extension of the authority of Shah Alem, enjoined that he should be treated with friendship, good faith, and respectful attention, Warren Hastings did unite with the Captain-General of the Mahratta State, called Madajee Sindia, in designs against the few remaining territories of the Mogul Emperor; and that whilst he sent an agent to Delhi, and carried on intrigues with the King and his ministers, tending to involve the Company in renewed hostililities, he did all along concur with the Mahrattas in their designs against the said King and his ministers, under the treacherous pretext of supporting the authority of the former against the latter, and did contrive and effect the ruin of them all, having in view one only object, the aggrandizement of the lately hostile, and always dangerous, power of the Mahrattas, which he pursued by means highly dishonourable to the British character for honour, justice, candour, plain-dealing, moderation, and humanity.

19. That although it was highly improper to publish letters or papers in defence of measures under the consideration of the Court of Directors, without their consent, Warren Hastings published a narrative of his transactions at Benares without leave had, in order to preoccupy the minds of their servants, and ensure a factious countenance and support; and that upon the communication to him of the Resolutions of the Court disapproving of his proceedings, he did write and cause to be printed and published a certain false, insolent, malicious, and seditious libel, purporting to be a letter from him to the Court, and calculated, as they remark, to bring upon them odium and contempt, and excite a spirit of disobedience to the lawful government of this nation in India, through all ranks of their service.

ADDITIONAL CHARGES, 28TH APRIL.

20. That although W. Hastings pronounced the war entered into by the Bombay Government with the Mahrattas, to be unseasonable, impolitic, unjust, and unauthorized, and sent an envoy to conclude peace, yet he afterwards sanctioned the violation of the article upon which its establishment depended, and by concurring in the support given by the Bombay Government to the unjustifiable pretensions of Ragoba, a person universally held in abhorrence in the Mahratta empire, prevented the conclusion of the treaty, and that he was therefore specially and principally answerable for the war that followed, with all the expense, distress, and disgraces, which attended it. That being finally obliged to conclude peace, Warren Hastings did consent to articles highly disadvantageous to the Company, and dishonourable to the British character, by con-

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ceding every object for which the war had been undertaken, and abandoning to the vindictive resentment of the Mahrattas, the princes who had been our allies—such as the Rana of Gohud, the Nabob of Bhopal, and Futty Sing Guicowar. That he embarrassed the negotiations by employing different ministers to treat, evincing an eagerness highly detrimental to the interests of the English, and originating not in any sincere desire for tranquillity, but the purpose of engaging the India Company in a new war with Hyder Ally, and making the Mahrattas parties thereto: and that upon the conclusion of peace with Tippoo by the Government of Fort St. George, ratified by that of Bengal, during the absence of Warren Hastings at Lucknow, he did endeavour, at the interested instigation of the Nabob of Arcot, to impose additional articles in favour of the Nabob, to the imminent peril of a renewal of the calamities and dangers of the war.

21. That in defiance of the Act of Parliament commanding the obedience of the Governor-General and Council to the orders of the Court of Directors, and in disregard of positive orders from the Court, that the correspondence with the Princes or country powers, although carried on by the Governor-General, should be communicated to the Council, and ultimately to the Court, Warren Hastings in sundry instances concealed from his council the correspondence carried on by him with the princes of India, and withheld from the Court copies of the correspondence, and the proceedings thereon, for the purpose of covering his own improper and dangerous practices from his employers.

FURTHER ARTICLE OF CHARGE, 5TH MAY.

22. That in violation of solemn treaties and guarantees entered into with Fyzoolla Khan, Nabob of Rampore, W. Hastings demanded of the Nabob to furnish more than his stipulated quota of troops, conspired with the Nawab Vizir to strip Fyzoolla Khan of his possessions, and finally, extorted from him a large sum of money in lieu of the troops which were illegally required; in consideration of which, he fully exculpated the Nawab of the evil intentions of which he, under the influence of secret and criminal purposes, had falsely and unjustly accused him.

These were the charges preferred against Mr. Hastings, and most of them were extended to an inordinate length, from the desultory manner in which they were urged, and the vast quantity of collateral, and not unfrequently, irrelevant matter, with which they were overloaded. The Benares charge, for example, is classed under five heads, besides an introduction, and contains 110 paragraphs, some of them of great length. Notwithstanding all this parade of denunciation, the Trial was confined to the third and fourth charges, or those relating to Cheit Sing and the Begums of Oude; the seventh, that of the contracts, including the other articles relating to the same subject; and the eighth, or that concerning 'presents.'—W.

CHAPTER II.

The Trial of Mr. Hastings.

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The trial of Mr. Hastings commenced in Westminster Hall on the 13th day of February, 1788. So great was the interest which this extraordinary event had excited, that persons of the highest elevation crowded to the scene.[1] After two days were

[1] Take the following account, from the publication entitled, Trial of W. Hastings, Esq., &c. p. 1.—" Previous to their Lordships' approach to the Hall, about Eleven o'Clock, her Majesty, with the Princesses Elizabeth, Augusta, and Mary, made their appearance in the Duke of Newcastle's gallery. Her Majesty was dressed in a fawn-coloured satin, her head-dress plain, with a very slender sprinkling of diamonds. The royal box was graced with the Duchess of Gloucester and the young Prince. The ladies were all in morning dresses; a few with feathers and variegated flowers in their head-dress, but nothing so remarkable as to attract public attention.

" Mrs. Fitzherbert was in the royal box.

" The Dukes of Cumberland, Gloucester, and York, and the Prince of Wales, with their trains, followed the Chancellor, and closed the procession.

" Upwards of 200 of the Commons, with the Speaker, were in the gallery.

" The Managers, Charles Fox and all, were in full dress.

" But a very few of the Commons were full dressed—some of them were in boots. Their seats were covered with green cloth—the rest of the building was " one red."

" Mr. Hastings stood for some time—On a motion from a Peer, the Chancellor allowed, as a favour, that the prisoner should have a chair—And he sat the whole time—but occasionally, when he spoke to his Counsel.

" His Counsel were Mr. Law, Mr. Plomer, Mr. Dallas.—For the Commons—Dr. Scott and Dr. Lawrence; Messrs. Mansfield, Piggot, Burke, and Douglas.

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spent in the preliminary and accustomed ceremonies, on the 15th Mr. Burke began. His oration was continued on the 16th, 18th, and 19th, and lasted four days. It was the object of this address to convey to the members of the court a general idea of the character and circumstances of the people of Hindustan; of their situation under the government of Englishmen; of the miseries which he represented them as enduring through the agency of Mr. Hastings; and of the motives, namely, pecuniary corruption, to which he ascribed the offences with which that Governor was charged. The most remarkable passage in the speech was that which related to the enormities imputed to Devi, or Deby Sing; a native placed by Mr. Hastings in a situation of confidence and power. It cannot be omitted; both because the delivery of it is matter of history, whatever may be the proper judgment with respect to the accusations which it brought; and also, because it gave birth to several subsequent proceedings on the trial. This man was admitted; according to the accuser, improperly, and for corrupt ends; to farm the revenues of a large district of country. After a time, complaints arrived at Calcutta, of cruelties which he practised, in extorting money from the people; upon whom, contrary to his instructions, he had raised the rents. Mr. Paterson, one of the gentlemen in the civil service of the Company was deputed, in the capacity of a Commissioner,

"A party of horse-guards, under the command of a Field Officer, with a Captain's party from the horse-grenadiers, attended daily during the trial.

"A body of 300 foot-guards also kept the avenues clear, and a considerable number of constables attended for the purpose of taking offenders into custody."

to inquire into the foundation of the complaints. It was from his report, that the statements of Mr. Burke, reported in the following words, were derived.

"The poor Ryots, or husbandmen, were treated in a manner that would never gain belief, if it was not attested by the records of the Company; and Mr. Burke thought it necessary to apologize to their Lordships for the horrid relation, with which he would be obliged to harrow up their feelings; the worthy Commissioner Paterson, who had authenticated the particulars of this relation, had wished that, for the credit of human nature, he might have drawn a veil over them; but as he had been sent to inquire into them, he must, in discharge of his duty, state those particulars, however shocking they were to his feelings. The cattle and corn of the husbandmen were sold for less than a quarter of their value, and their huts reduced to ashes! the unfortunate owners were obliged to borrow from usurers, that they might discharge their bonds, which had unjustly and illegally been extorted from them while they were in confinement; and such was the determination of the infernal fiend, Devi Sing, to have these bonds discharged, that the wretched husbandmen were obliged to borrow money, not at twenty, or thirty, or forty, or fifty, but at SIX HUNDRED per cent. to satisfy him! Those who could not raise the money, were most cruelly tortured; cords were drawn tight round their fingers, till the flesh of the four on each hand was actually incorporated, and became one solid mass: the fingers were then separated again by wedges of iron and wood driven in between them.—Others were tied two and two by the feet, and thrown

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across a wooden bar, upon which they hung, with their feet uppermost; they were then beat on the soles of the feet, till their toe-nails dropped off.

"They were afterwards beat about the head till the blood gushed out at the mouth, nose, and ears; they were also flogged upon the naked body with bamboo canes, and prickly bushes, and, above all, with some poisonous weeds, which were of a most caustic nature, and burnt at every touch. The cruelty of the monster who had ordered all this, had contrived how to tear the mind as well as the body; he frequently had a father and son tied naked to one another by the feet and arms, and then flogged till the skin was torn from the flesh; and he had the devilish satisfaction to know that every blow must hurt; for if one escaped the son, his sensibility was wounded by the knowledge he had that the blow had fallen upon his father: the same torture was felt by the father, when he knew that every blow that missed him had fallen upon his son.

"The treatment of the females could not be described:—dragged forth from the inmost recesses of their houses, which the religion of the country had made so many sanctuaries, they were exposed naked to public view: the virgins were carried to the Court of Justice, where they might naturally have looked for protection: but now they looked for it in vain; for in the face of the Ministers of Justice, in the face of the spectators, in the face of the sun, those tender and modest virgins were brutally violated. The only difference between their treatment and that of their mothers was, that the former were dishonoured in the face of day, the latter in the gloomy recesses of

their dungeon. Other females had the nipples of their breasts put in a cleft bamboo, and torn off. What modesty in all nations most carefully conceals, this monster revealed to view, and consumed by slow fires; nay, some of the tools of this monster Devi Sing had, horrid to tell! carried their unnatural brutality so far as to drink in the source of generation and life.

"Here Mr. Burke dropped his head upon his hands a few minutes; but having recovered himself, said, that the fathers and husbands of the hapless females were the most harmless and industrious set of men. Content with scarcely sufficient for the support of nature, they gave almost the whole produce of their labour to the East India Company: those hands which had been broken by persons under the Company's authority, produced to all England the comforts of their morning and evening tea: for it was with the rent produced by their industry, that the investments were made for the trade to China, where the tea which we use was bought."[1]

[1] The words of the quotation are taken from the short account of the speech which is given in the History of the Trial of Warren Hastings, Esq, published by Debrett. The account, though short, is the best which I have been able to procure. The report to which I have had access, in the MS. of the short-hand writer, is exceedingly confused, and indistinct. Upon this passage, the compiler of the History of the trial adds in a note, "In this part of his speech Mr. Burke's descriptions were more vivid—more harrowing—and more horrific—than human utterance on either fact or fancy, perhaps, ever formed before. The agitation of most people was very apparent—and Mrs. Sheridan was so overpowered that she fainted.

"On the subject of the Ministers of these infernal enormities, he broke out with the finest animation!

"'My Lords,' exclaimed Mr. Burke, 'let me for a moment quit my delegated character, and speak entirely from my personal feelings and conviction. I am known to have had much experience of men and manners—in active life, and amidst occupations the most various! From

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The next proceeding in the course of the trial was a matter of great importance. As soon as Mr.

that experience, I now protest—I *never* knew a man who was *bad*, fit for service that was *good!* There is always some disqualifying ingredient, mixing and spoiling the compound! The man seems *paralytic* on that side! His muscles there have lost their very tone and character!—They cannot move! In short, the accomplishment of any thing good, is a physical impossibility for such a man. There is decrepitude as well as distortion—he COULD NOT if he would, is not more certain, than he WOULD NOT, if he could!'

"Shocking as are the facts which Mr. Burke related, and which he says he finds recorded in the account taken by Mr. Paterson, who was appointed Commissioner to inquire into the circumstances of this dreadful business, and of a rebellion which took place in consequence, Mr. Burke says, of the above-mentioned cruelties: our readers must see that Mr. Hastings cannot be responsible for them, unless it shall be proved that he was privy to, and countenanced the barbarities."—M. Burke's oratory on this occasion was liable to still more serious censure. It was a tissue of falsehood. In any case, the cruelties of Deby Sing in collecting his rents could not be charged upon Hastings, for as soon as he heard or knew of them he displaced him, and that in so hasty a manner as to expose himself to the charge of having acted with too much severity towards Deby Sing. But, in fact, although some acts of violence had been committed, nothing had occurred to justify Burke's exaggeration. The late Henry Thomas Colebrooke, who, in 1788, had been some time in India, and was not at all an admirer of Hastings, nor inclined to extenuate his errors, thus writes to his father. "Mr. Paterson's report was not founded upon evidence taken and facts ascertained. Sent up to investigate accusations preferred against Raja Deby Sing, he received every petition presented, however improbable the facts asserted, and drew up his report upon no better grounds than the tenor of the complaints delivered to him." . . . . . "It is from such a report that Mr. Burke has selected Mr. Paterson for his hero, unaware that a respectable commission consisting of three gentlemen of known abilities and integrity, with diligence unremitted during many months, investigated those matters, and that the result of their inquiries and the whole purport of a large body of evidence from witnesses produced on both sides, proved the assertions in Paterson's report groundless. Notices of the Life of H. T. Colebrooke, Esq. by his son. Trans. R. Asiatic Society, vol. v. p. 11. At a subsequent period, June 1794, Mr. Law, adverting to this charge, states the fact of this commission and of its results, and he also does justice to Mr. Paterson, who he says, "was so little pleased with the encomiums of the leading manager, (Burke,) that he has publicly disavowed them, and expressed concern that his reports should have been tortured into evidence against Hastings." Parliamentary History, xxxi, 949. Burke knew Mr. Paterson's opinion long before:

Burke had finished his opening speech, Mr. Fox stood up, and explained to the Court the order of

possibly even at the very moment when he was charging Hastings with being the cause of atrocities that he had reason to believe were at least of equivocal existence. Certainly some intimation had been conveyed to Burke from Mr. Paterson, early in 1788, the year in which the crimes of Deby Sing were dwelt upon with such an unnatural appetite for disgusting details, that he was desirous of qualifying or retracting the information he had given in his report. That this intimation alarmed and irritated Burke, is evident from a Letter in the Editor's possession, from him, to a friend of Mr. Paterson, through whom the communication had been conveyed. The Letter is dated 7th of April, 1788, in it he endeavours to intimidate Mr. Paterson from disclaiming his concurrence in Burke's accusations; without effect, it should seem, from the tenor of Mr. Law's statement. Burke thus writes about six weeks after he had made his oration; " On the credit and authority of Mr. Paterson's accuracy and fidelity, I have in the name of the Commons of this Kingdom, in the presence of Europe, and before the most awful of all tribunals, given a strong representation of the ill-government exercised in Rungpore, during the administration of Mr. Hastings. It is not in my choice, because I do not act for myself, but in trust for others, to suffer the Commons of Great Britain to be discredited, without doing all in my power to bring to punishment those, who through negligence, or other unjustifiable causes, have been the means of misleading them. It is not in my choice for a moment to tolerate any sort of compromise, which tends to destroy the credit, not only of the testimony which Mr. Paterson has collected, but of all other testimony which can be produced hereafter, on any complaint of oppression. There is no medium. Either Mr. Paterson has been guilty of criminal and unpardonable negligence, implying a strong suspicion of corruption in executing his office of commissioner, or there has been a most shocking and corrupt scene of combination and collusion to abet tyranny, and to suppress truth, one or the other of these at some time must be determined to be the fact, and the point so determined *must* be acted upon. I am no longer alone in this business, nor does it depend upon my single life, or my continuance in parliament." The meaning of this last menace is somewhat mysterious, but it is evidently designed to terrify a timid, though conscientious man, from proclaiming any truth unfavourable to Burke's purposes. As to the alternatives which the orator leaves to time, neither has been established. There was neither criminality nor collusion in the commissioner's report, or in his retractation, although upon Mr. Colebrooke's testimony, it appears that there were the same errors in Mr. Paterson's proceedings, which marked every step of Burke's; a prejudiced disposition to listen alone to exparte evidence, and an imprudent readiness to credit the exaggerated language of complaint.—W.

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proceeding which it was the intention of the managers for the prosecution to adopt.

They proposed that one of the articles of impeachment only should be taken under consideration at one time; that the speakers and the evidence, both for the prosecution, and for the defence, should, in the usual manner, be heard on that individual article; that the sentence of the court should then be pronounced; and that the several charges should thus be treated, and thus disposed of, one after another, to the end.

The counsel for Mr. Hastings, three barristers, Mr. Law, Mr. Plomer, and Mr. Dallas, were asked by the Lords, if they agreed to the proposed course of procedure. Upon their declaration, that they desired the matter of accusation upon all the articles to be exhibited first, after which they would deliver all the matter of defence upon them all, when, lastly, the Court might decide upon them all, the parties were ordered to produce what they could urge in support of their respective demands.

Mr. Fox maintained, that the weight of evidence was best appropriated when fresh in the memory; that distinctness and clearness, notwithstanding the complexity of the subject, and facility of conception, notwithstanding its vastness, might, according to the method recommended by the managers, be to a considerable degree attained; whereas, according to the mode of procedure for which the lawyers contended, evidence would be decided on after it was forgotten, and such an accumulation of matter would be offered all at once to the mind, as no mind, without taking it piecemeal, was competent to manage.

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The three learned gentlemen, as the lawyers are called, spoke, one after another, very earnestly, and at considerable length. Mr. Law was first, and most vehement. He proceeded to animadvert upon the strong language of condemnation which had been employed by Mr. Burke; and was reproached for the very offence of which he complained. He alluded to the opprobrious language with which a great state prisoner had been treated by a hot-headed lawyer of former times, and said, "this defendant has been loaded with terms of such calumny and reproach, which since the days of Sir Walter Raleigh were never used at the bar of this House."[1] Mr. Fox interrupted him, and said, that, vested with a great trust by the house of Commons, he could not sit and hear such language applied to an accusation which that House, in the prosecution of high crimes, had carried to the bar of the competent court.

In opposition to the order of proceeding, recommended by the managers, the allegations urged by the lawyers were; that such an order was contrary to ancient usage; that the cases offered by the managers as precedents did not apply, and in fact there was no precedent; that the mode proposed was contrary to the modes of procedure at common law; and that it was disadvantageous to the defendant. Mr. Law and Mr. Dallas specified one disadvantage, That in giving their answer upon one charge, they might be compelled to disclose to their adversary the defence which they meant to employ upon others. "My Lords," said Mr. Law, "we

[1] Short-hand writer's report, MS. in the writer's hands.

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are to come forward, on the first article, to state our case, and to produce all the evidence, and all the defence, we are to make on nineteen others. Is it just? Is it reasonable? Is it what would be admitted in any other court of justice? On the first article we are immediately put under the necessity to sustain our defence: the cross examination of the prosecutor immediately attaches on those witnesses; they extract from them perhaps some evidence which may make it less necessary to call on their part such evidence as they want. Is that right?"[1] It was further urged by Mr. Dallas, that as the charges had a close connexion, the evidence which applied to one, would sometimes be necessary for another, whence repetition and delay.

The Lords withdrew to their own chamber to deliberate, and adjourned the Court to the 22nd. The Lord Chancellor Thurlow opened the question, in the chamber of the Lords, by strongly recommending, in a speech of considerable length, the order of proceeding contended for by the lawyers; and his proposition was adopted without a division. The business of the Court on the 22nd was opened by the Lord Chancellor, proclaiming, "Gentlemen, I have in charge to inform you, that you are to produce all your evidence, in support of the prosecution, before Mr. Hastings is called upon for his defence."

The historian, who is not bound by the opinion, either of the Judges, or of the prosecutors, is called upon to try if he can discover the decision which is pronounced by reason upon the facts of the case.

[1] MS. ut supra.

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It will not, surely, admit of dispute, that a question will be decided most correctly, when all the evidence which bears upon it is most fully present to the memory, and every part of it receives its due portion of regard. As little will it admit of dispute, that two things contribute to that just appreciation of evidence, namely, recent delivery, and freedom from the mixture both of other evidence not bearing upon the point, and of other questions distracting the attention. The truth of every affirmation is best seen, when the mind, as exempt as possible from every other thought, applies the proof immediately to the point which is in dispute; confronts the affirmative with the negative evidence; adjusts the balance, and decides. There cannot be a question, that for the purpose of ascertaining the truth, of estimating the evidence correctly, and arriving at a decision conformable to the facts, as they took place, the course recommended by the managers was the proper course. As little can it be doubted, that for the purposes of lawyer-craft; for all the advantages to be gained by the suppression of evidence, by the loss of it from the memory, by throwing the Judges into a state of confusion and perplexity, when the mind becomes passive, and allows itself to be led by the adviser who seems most confident in his own opinion; the course successfully contended for by the lawyers, was infinitely the best. The course recommended by the managers, was most favourable to an innocent defendant, to the man for whose advantage it is that the truth should be correctly ascertained. The course successfully contended for by the lawyers was most favourable to a guilty

BOOK VI CHAP. 2. defendant, to the man for whose advantage it is that the truth should not be correctly ascertained.

1788. If *truth* is the end, we have, then, arrived at a decision. To this reasoning and its conclusion, there is not, in the harangues of the lawyers, a tittle opposed. On this, the only question at issue, they were silent: and diverted the attention to other objects. They did not inquire, whether the path pointed out was that which led to the discovery of truth; but whether the Lords, or the lawyers, had been accustomed to tread in that path before. We shall now, however, decide, that whenever the path which leads to truth is discovered, it is no longer the question who has *not* walked in it before, but who shall best walk in it for the future. When the path which leads to truth is discovered, it is a wretched solicitude, which endeavours to find out that our predecessors have *not* walked in it, in order that we may follow their unhappy example, instead of proceeding in the direction which reason points out as the only one that is good. As for the practice of the lawyers' courts, if that was ascertained to lead in a direction not the most favourable to the discovery of truth, there was no obligation on the Lords to follow it.

After this, the lawyers had two allegations, and no more. There was Mr. Law's complaint, that they would be obliged, on one charge, to disclose the grounds of their defence on all. This is a complaint, at being obliged to contribute to the discovery of truth. It is a demand, that a door should be left open to lawyer-craft, for the purpose of defeating the discovery of truth. No disadvantage,

but that which the disclosure of truth inferred, could thus arise to the defendant. The necessity of producing evidence would be equal to both parties. If the defendant were obliged, in answering one charge, to disclose the grounds of his defence on others, the accusers would be equally obliged to disclose the grounds of their accusation. The party who by this course would gain, is the party to whom the truth would be favourable; the party who would lose, the party to whom the truth would be noxious. According to the course of the lawyers, the advantage and disadvantage change their sides.

Last of all, we notice the allegation of Mr. Dallas, that, as several of the articles of charge were closely connected, it would be necessary to repeat a part of the evidence. This is true; and so far as it goes a valid objection. But surely the small portion of additional labour, and the small portion of additional time, requisite for hearing more than once the same article of evidence, may be counterbalanced by a small advantage afforded to the discovery of truth. Besides, when the Judges, after the lapse of years, came to pronounce a separate judgment upon each of the charges, it was absolutely necessary for them, either to repeat to themselves the evidence as often as repetition was necessary, or so far to decide without evidence.[1]

[1] This reasoning is full of fallacies. The main argument is, that prompt decision ensures perfect recollection of the evidence; but what judge ever trusts to his memory for the appreciation of evidence, unless it be very brief and simple, and applicable to a case which can at once be decided; for what memory can accurately retain many and complicated particulars, asserted by a number of witnesses during a long and desultory

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A protest, on the subject, well worthy of a place in the history of this trial, was entered on the Journals of the Lords:

examination, continued during many successive days, and often suspended for many days? There was in Hastings's Trial no such thing as "recent" delivery of the testimony, there was no possibility of preventing its escaping to a very material extent from the recollection. No conscientious person could have founded a decision upon it as it was heard. He would have weighed it, and pronounced judgment upon it as it was recorded. But if it is necessary for the ends of justice, and that it is so, no person can question, that evidence should be recorded, the recollection of it becomes a matter of indifference. We are as competent at this time to examine its bearing, and determine the amount of its proof, as the persons who actually listened to its utterance. Again, as to another chief argument—the advantage of examining the proofs of each charge separately in detail: it is evident from the minutes of the evidence, that such a course would have been most unfavourable to the elicitment of truth. The circumstances of the principal charges were inseparably connected with each other, and to have passed judgment on one, without investigating both, would have excluded the judges from the cognizance of much that was indispensable to a comprehensive view of either. The managers, themselves, admitted this most unequivocally, when they abandoned a number of specific charges, because they were "partly involved in others previously investigated." The charges assailed the whole of the intentions and the acts, and the general character of the administration of Hastings, through a series of years; and it was absolutely necessary to look at them together, to judge of them individually. A different procedure, a piece-meal investigation, would have been open to the objections so justly taken to such a course in the preface, and would have exemplified the apologue of the blind men and the elephant.

As to the arguments of the managers, they, like all the sophistical reasonings of public debaters were adapted to a particular object, and not founded on general principles. Of this a very remarkable and irrefutable proof is afforded by the conduct of Mr. Fox, who on this occasion stood foremost in advocating a decision upon the charges severally. Unfortunately for his consistency he had not very long before maintained the opposite doctrine. "Mr. Secretary Fox perfectly agreed in the method proposed by the learned lord, and advised the Hon. Baronet (Sir Thomas Rumbold) to postpone his defence until he heard every thing that could be alleged against him."— Debates on Charges against Sir T. Rumbold, 29th April, 1782, Parliamentary Hist. xxii. 1316. It may be said that there was no inconsistency in this; Fox wishing in one instance to screen, in the other to convict. This is true—but it is not calculated to inspire us with any respect for arguments that take their colour from personal interests and feelings, not from a love of truth or reverence for justice.—W.

"DISSENTIENT. 1st. Because we hold it to be primarily essential to the due administration of justice, that *they who are to judge have a full, clear, and distinct knowledge* of every part of the question on which they are ultimately to decide: and in a cause of such magnitude, extent, and *variety*, as the present, where issue is joined on acts done at times and places so distant, and with relation to persons so different, as well as on crimes so discriminated from each other by their nature and tendency, we conceive that *such knowledge* cannot but with extreme difficulty be obtained without a separate consideration of the several articles exhibited.

"2nd. Because we cannot with equal facility, accuracy, and confidence, *apply and compare the evidence adduced*, and more especially the arguments urged by the prosecutors on one side and the defendant on the other, if the whole charge be made one cause, as if the several articles be heard in the nature of separate causes.

"3rd. Because, admitting it to be a clear and acknowledged principle of justice, that the defendant against a criminal accusation should be at liberty to make his defence in such form and manner as he shall deem most to his advantage; we are of opinion, that such principle is only true so far forth as the use and operation thereof shall not be extended *to defeat the ends of justice, or to create difficulties and delays equivalent to a direct defeat thereof;* and, because we are of opinion, that the proposition made by the managers of the House of Commons, if it had been agreed to, would not have deprived the defendant in this prosecution, of the fair and allowable

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benefit of such principle taken in its true sense; inasmuch as it tended only to oblige him to apply his defence specially and distinctly to each of the distinct and separate articles of the Impeachment, *in the only mode in which the respective merits of the charge and of the defence can be accurately compared and determined*, or *even retained in the memory*, and not to limit or restrain him in the form and manner of constructing, explaining, or establishing his defence.

"4th. Because, in the case of the Earl of Middlesex, and that of the Earl of Strafford, and other cases of much less magnitude, extent and variety, than the present, this House has directed the proceedings to be according to the mode now proposed by the managers on the part of the Commons.

"5th. Because, even if no precedent had existed, yet, from the new and distinguishing circumstances of the present case, it would have been the duty of this House to adopt the only mode of proceeding, which, founded on simplicity, *can ensure perspicuity, and prevent confusion.*

"6th. Because we conceive, that the accepting the proposal made by the Managers would have been no less *consonant to good policy than to substantial justice*, since by possessing *the acknowledged right of preferring their articles as so many successive Impeachments*, the Commons have an undoubted *power of compelling this House in future virtually to adopt that mode which they now recommend;* and if they should ever be driven to stand on this extreme right, jealousies must unavoidably ensue between the two Houses, whose harmony is the vital principle of na-

tional prosperity; public justice must be delayed, if not defeated; the innocent might be harassed, and the guilty might escape.

"7th. Because many of the reasons upon which a different mode of conducting their prosecution has been imposed upon the Commons, as alleged in the debate upon this subject, appear to us of a still more dangerous and alarming tendency than the measure itself, forasmuch as *we cannot hear but with the utmost astonishment and apprehension*, that this Supreme Court of Judicature is to be concluded *by the instituted rules of the practice of inferior Courts;* and that *the law of Parliament*, which we have ever considered as recognised and reverenced by all who respected and understood the laws and the constitution of this country, *has neither form*, *authority*, *nor even existence;* a doctrine which we conceive *to strike directly at the root of all parliamentary proceeding by impeachment,* and to be equally destructive of established rights of the Commons, and of the criminal jurisdiction of the Peers, and consequently to tend to the degradation of both Houses of Parliament, to diminish the vigour of public justice, and to subvert the fundamental principles of the constitution.

[Signed]

Portland,	Wentworth Fitzwilliam,
Devonshire,	Stamford,
Bedford,	Loughborough,
Cardiff,	Craven,
Derby,	

For the 1st, 2nd, and 7th reasons, Manchester.

For the 1st and 2nd reasons only { Townshend, Harcourt, Leicester."

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After withdrawing for a few minutes to deliberate, the managers for the Commons submited to the decision of the Lords, and proceeded to the investigation upon the first of the charges; that relating to the conduct of the defendant toward the Raja of Benares, Cheyte Sing. Mr. Fox addressed the Court as accuser, and Mr. Grey followed him the succeeding day. This was the eighth day of the trial; and time was consumed in hearing evidence, with disputes raised about its admission or exclusion, from that till the 13th, when Mr. Anstruther summed up, and commented upon the matter adduced. Of the evidence, or the observations by which it was attended, both for the accusation and the defence, as it is hoped that the preceding narrative has already communicated a just conception of the facts, a repetition would be attended with little advantage; and the incidents by which the course of the proceedings was affected will appear, in most parts of the trial, to include nearly the whole of what the further elucidation of this memorable transaction requires.

On the 29th of February, which was the eleventh day of the trial, Mr. Benn, a witness, professing forgetfulness, or speaking indeterminately, on a point on which he appeared to the managers to have spoken more determinately, when previously examined before the House of Commons, was interrogated as to the tenor of his evidence on that preceding occasion. The barristers, of counsel for the defendant, had cavilled several times before at the questions of the accusers. They now made a regular stand.

Mr. Law, and Mr. Plomer, argued, that a party should not be allowed to put any questions tending

to lessen the credit of his own witness. Their reasons were, that such a proceeding was not allowed in the courts of law; that if the party believed his witness unworthy of credit, he acted fraudulently, in proposing to take the benefit of his evidence, if favourable; to destroy his credit, if the reverse; and that such an inquisition is a hardship to the man upon whom it is imposed.

The managers for the Commons contended; That such a question as they had put was conformable to the practice both of the courts of law, and of the high court of parliament; as appeared by the trial of Lord Lovat, by the permission given to put leading questions to a reluctant witness, and the practice in the courts of law of questioning a witness as to any deposition he may have made on the same subject in a court of equity: That most of the witnesses, who could be summoned upon this trial, were persons whose prejudices, whose interests, whose feelings, were all enlisted on the side of the defendant; and who would not, if they could help it, tell any thing to his prejudice: And that hence, in all cases similar to this, the privilege for which they contended was essential to justice.[1]

It is evident from former reasonings, that the first and principal plea of the lawyers is altogether foreign to the question, and deserves not a moment's regard. A contrary practice was universal in the courts of law. What then? The question of the wise man

[1] Minutes of the Trial of Warren Hastings, MS. The reader may, however, consult the printed History, ut supra, which differs in nothing material from the original document in my hands.

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1788. Witnesses would suffer by sustaining the proposed inquisition. But surely inquisition is not a worse thing, performed by one, than performed by another party. Inquisition is performed upon every witness by the cross examination. But if inquisition is to be performed, what objection is there to giving *truth* the benefit of it? Why confine it to one of the parties?

We now come to that plea of theirs which alone has any obscurity in it. A party ought not to bring a witness, whose testimony is unworthy of trust. To this two things are to be given in answer. First, he may bring a witness, not knowing that he is unworthy of trust. Secondly, he may bring a witness, knowing that he is very imperfectly worthy of trust, because he has none that is better.

If a party brings a witness, expecting he will speak the truth, but finds that he utters falsehood, he is without resource, unless he is permitted to show that what is uttered is falsehood, or at any rate destitute of some of the requisite securities for truth. Upon these terms, a man need only be admitted a witness, to defeat, when he pleases, the cause of justice. This is to shut up one of the doors to the discovery of truth; and whatever in judicature shuts up any of the doors to the discovery of truth, by the same operation opens a door to the entrance of iniquity. Let us inquire what danger can arise from the privilege to which the lawyers object. If the testimony is really true, to scrutinize is the way to confirm, not weaken it. If the credibility of the

witness is good, the more completely it is explored, the more certainly will its goodness appear. Make the most unfavourable supposition ; that a party brings a witness, expecting mendacity ; and, finding truth, endeavours to impair his credit. This is a possible case : Let us see what happens. All that a party can do to weaken the credit of a witness, is to point out facts which show him to be capable of mendacity. The credibility of a witness is either strong or weak. If strong, the attempts of a party who stands in the relation of a summoning party, to detract from it, can hardly ever have any other effect than to confirm it, and cast suspicion on his own designs. If weak, he can only show the truth, which ought always to be shown ; and if it appears, that he brought a witness, known to be mendacious, whose character he discloses only when he speaks the truth, in this case too he affords presumption against himself. Even when a witness, who has a character for mendacity, speaks the truth, it is fit that his character should be made known to the judge. It is not enough that one of the parties happens to know the conformity between the testimony and the facts. The satisfaction of the public is of more importance than that of an individual ; and for the satisfaction of the public, it is necessary that all the requisite securities for the discovery of truth should have been employed.

It very often happens, that the only witness to be had is a mendacious and reluctant witness ; a partner, for instance, in the crime. Justice may yet have some chance, if the party whose interest it is that the truth should be discovered is allowed the use of all the most efficient instruments of extraction. But if

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his witness declares, for example, that he does not recollect, and the party is not allowed to adduce evidence to show that it is impossible he should not recollect, a witness of such a description has a license put into his hand to defeat the ends of justice. It is thus abundantly evident that the honest suitor has often the greatest possible occasion for the power of discrediting his own witness, and must be defeated of his rights if deprived of it. Let us see what possible evil the dishonest suitor can effect by being possessed of it. He wishes, for example, to prove the existence of a fact which never had existence; and he brings a man whom he expects to swear to it, but who disappoints him. Here it is plain that to discredit his witness does no harm; the false fact remains unproved. Let us suppose that he brings, to disprove an actual fact, a witness who disappoints him. In this case he gains as little by discrediting his witness; the true fact is not in the least by that means disproved. But these two are the only possible sets of cases, to which for a fraudulent purpose evidence can be adduced. It appears then, we may almost say, demonstratively, that the power of discrediting his own witness may very often indeed be of the utmost importance to the honest suitor, can never, or almost never, be of any use to the dishonest one. It is a power, therefore, essential to the ends of justice.[1]

[1] For a specimen of just ideas on this, and other parts of the subject of evidence, see an unfinished work, entitled "Rationale of Evidence, by J. Bentham, Esq." For a complete elucidation, the public must wait for that more voluminous production, which he announced as nearly prepared, so long ago as in the first edition of the Letters to Lord Grenville on Scotch Reform.

The Lords, however, in conformity with the wishes of the lawyers, and with a grand lawyer at their head, having adjourned to their own chamber for the purpose of deliberation, opened the business, the day on which the court was next convened, by informing the managers for the Commons, that it was not allowed them to put the question which they had last proposed. "The managers for the Commons," say the printed Minutes of Evidence, "requested leave to withdraw for a while.—The managers for the Commons, being returned, said it was with the greatest concern they informed the House, that it was impossible for them to acquiesce in the decision of the House: That they felt it so important, not only to the present question, but to the whole of the trial, that they should hold themselves bound to go back to the House of Commons, who sent them thither, to take instructions from them how to proceed—if they did not feel it necessary to proceed with vigour and despatch, which might make them, for the present, wave their opinion upon the subject, but under a protest the most strong, that they had a right to put the question proposed, and that if they should think a similar question necessary to be put in the course of the future proceedings, they would propose it for the more deliberate judgment of the House."[1]

On the 10th day of April, and thirteenth of the trial, the evidence for the prosecution, on the first article of impeachment, was closed. On the following day it was summed up by Mr. Anstruther; and this

[1] Minutes of the Evidence taken at the Trial of Warren Hastings, Esq., p. 321.

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part of the trial was concluded by some observations which Mr. Burke requested permission to adduce, on a peculiar feature of the evidence, to which the nature of the circumstances compelled the complainants in this case to resort. It had been already remarked that of the witnesses who could be called upon this prosecution, the greater part from powerful causes would be favourable to the defendant. It was now remarked that they would be lenient to the crimes. "It was to be recollected, that some of those men who had been called to the bar of the court, had been the instruments of that tyranny which was now arraigned. Those who were deputed to oppress were to be heard with caution when they spoke of the measure of the oppression. It was easy to be seen that those who had inflicted the injustice would not use the harshest terms when speaking of its measure and rate."[1]

On the 15th day of April, and the fourteenth of the trial, the proceedings were opened on the second article of the accusation; or that, relating to the Begums of Oude. Mr. Adam, in a speech of great length, exhibited a view of the allegations. On the following day, Mr. Pelham commented on the answer of Mr. Hastings, and evidence began to be heard.

The extreme want of recollection, professed by Mr. Middleton, and the embarrassment and confusion of his statements, having drawn down certain strictures from Mr. Sheridan, "I must take the liberty," said Mr. Law, the counsel, "of requesting, that the Honourable Manager will not make comments on the

[1] Minutes of the Trial of Warren Hastings, Esq. MS. of the short-hand writer.

evidence of the witness, in the presence of the witness. It will tend to increase the confusion of a witness who is at all confused; and affect the confidence of the most confident,—I shall, therefore, hope the Honourable Manager will, from humanity and decorum, attend to it. I am sure I do not mention it out of disrespect to him."[1] This passage is adduced to show the opinion of a person, of great eminence in the law, on a matter of some importance—the *browbeating* of a witness.

The courts in which, by the usual steps, he rose to preside, are justly designated, as, of all the places set apart for the administration of justice, those in which the rule of humanity and decorum, here set up by the advocate, is the most grossly and habitually violated. The advantage taken of the embarrassment of a witness, who really appears desirous to conceal or contradict the truth, is not of course the practice which it is meant to condemn. What excites the disgust and indignation of every honest spectator, from every quarter of the globe, is the attempt so often made, and so often made successfully, to throw an honest witness into confusion and embarrassment, for the sake of destroying the weight of his testimony, and defeating the cause of truth; the torture unnecessarily and wantonly inflicted upon the feelings of an individual, to show off a hireling lawyer, and prove to the attorneys his power of doing mischief.

Mr. Middleton availed himself to an extraordinary extent of the rule, a rule upheld by the Lords; that a witness might refuse to answer a question, which

[1] Minutes of the Trial of Warren Hastings, Esq. MS. of the short-hand writer, twentieth day.

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tended to criminate himself. This is a rule, which if thieves, robbers, and murderers, were the makers of law, one would not be surprised at finding in force and repute. That the personages, by whom it was established, wished the discovery of guilt, it is not easy to believe; for so far as it operates, the impunity of the criminal is secured.

On the 30th day of May, thirty-first of the trial, the evidence for the prosecution on the subject of the Begums was closed; and on the following, Mr. Sheridan began to present the view of it which he wished to imprint upon the minds of the judges. Four days were occupied in the delivery of the speech; and this part of the business was concluded on the 13th of June, when the Lords adjourned to the first Tuesday in the next session of parliament.

Before the time which was destined for re-assembling the parliament, the event occurred of the mental derangement of the King. This delayed the resumption of proceedings till the 21st of April, 1789. On that day, the thirty-sixth day of the trial, the article of impeachment, relating to the receipt of presents, was opened by Mr. Burke. The intermediate articles were omitted, partly as involved in the question respecting the Begums of Oude, and partly for the avoidance of delay, of which complaints were now industriously raised and dispersed.

Having stated in his speech those facts, the first information of which was derived from the Raja Nuncomar, the manager declared that, "if the counsel for the defendant should be so injudicious as to bring forward the conviction of the Raja, for the purpose of destroying the effect of these charges, he would

open that scene of blood to their Lordships' view, and show that Mr. Hastings had murdered Nuncomar by the hands of Sir Elijah Impey." Six days afterwards, that is on the 27th of April, when the manager had spoken for two days, Major Scott presented to the House of Commons a petition from Mr. Hastings, complaining that Mr. Burke had adduced against him a variety of accusations extraneous to the charges found by that House; and especially had accused him of having murdered Nuncomar by the hands of Sir Elijah Impey. Upon the subject of this petition several debates ensued. It was first disputed, whether the petition should be received: The managers contending, that the motion was irregular and unprecedented; that if every expression not agreeable to the feelings of the party accused, were improper in a criminal prosecution, it would be necessary for criminal prosecutions to cease; that a practice of petitioning against the accuser would regularly convert him into a species of defendant, and, by creating a diversion, defeat the prosecution of crimes; that if the prosecutor misconduct himself in his function, it is for the tribunal before which he offends to animadvert upon his conduct; that the Commons might undoubtedly change their managers, if experience had proved them to be unfit for their office; that if the Commons, however, did not mean to withdraw their trust, it would be inconsistent, by any discrediting procedure, to weaken the hands of those who, contending with an adversary so numerously surrounded, so potently supported, and whose delinquencies, by distance of place, distance of time, complexity of matter, and difficulties of innumerable sorts

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by which the production of evidence was loaded, were to so extraordinary a degree covered from detection, had need of support, not of debilitation; and who required additional strength to enable them to remove the obstacles which separated the evidence from the facts.

The minister, and with him the ministerial part of the house, observing that the Commons had given to their conductors limited powers, and that, if those conductors exceeded the bounds within which it was intended to confine them, it belonged to the Commons, not the Lords, to impose the due restraint, carried the vote that the petition ought to be received.

It was agreed, that the subject of the petition should undergo deliberation on the 30th of the month, and that in the mean time the Lords should be requested, by a message, to suspend proceedings on the trial.

On the 30th, instead of proceeding to the appointed deliberation, the House, on a suggestion of the Chancellor of the Exchequer, anxious, he said, to preserve the regularity of the proceedings of the House, communicated to the member whose conduct was charged (though everybody had seen him present at every thing which had passed), a formal notice, that a petition had been received, and that the House would take it into consideration on a day that was named. Mr. Burke, without objecting to the formality, said, that he had no wish for it on the present occasion; that he willingly cast himself on the honour and justice of the House; that he should gladly, if it were their pleasure, retire from the heavy burden under which they had placed him; that in

order to facilitate the inquiry he should not be present at their deliberation, and should in the mean time distinctly confess that he did employ the words, on account of which the complaint had been brought. In justification of them he observed; That circumstantial evidence constituted the proof by which the pecuniary corruption of Mr. Hastings was to be ascertained; that, in tracing the indications of concealed delinquency, a solicitude to destroy the sources of evidence had always been considered as one of the strongest; that it was for this purpose, the circumstances attending the death of Nuncomar had been exhibited; that this individual having offered to produce evidence of the pecuniary corruption of Mr. Hastings, and Mr. Hastings having lent himself both actively and passively to the destruction of this source of evidence, such behaviour on the part of Mr. Hastings, was circumstantial evidence of guilt; and that if circumstantial evidence must not be produced, because the mention of the scenes from which it is to be extracted may give pain to the individual, whose imputed guilt is the object of inquiry, the use of circumstantial evidence is precluded, and the punishment of some of the most dangerous crimes is rendered impossible.

On the following day, to which the consideration of the petition was postponed, a member of the House produced, and read a letter, from Mr. Burke. Its object was to exhibit again, and in a permanent form, the reasons which induced him to abstain from any share in the controversy respecting his own behaviour; and to declare that no appearance of disfavour, no discouragement, provided the House,

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whose servant he was, still left in his hands the trust which they had originally placed in them, should affect his attachment to the great service which he had undertaken to render, or slacken his diligence therein to the end. Describing the petition as a stratagem, familiar to the politics of Calcutta, for turning the accuser into a defendant, and diverting inquiry, he adduced two reasons, for declining all defence; first, because he would not expose his sources of proof to the knowledge, nor his witnesses to the power of the defendant; secondly, because a man whose conduct is good, can hardly ever be injured by unjust accusations. "It would," he said, "be a feeble sensibility on my part, which at this time of day would make me impatient of those libels, which by despising through so many years, I have at length obtained the honour of being joined in commission with this committee, and becoming an humble instrument in the hands of public justice." The last of the reasons, which were thus solemnly adduced by Mr. Burke, reaches far beyond the limits of any single inquiry, however important; since it involves in it the freedom of the press; and shows, that, even when it is converted to abuse, it is not for the advantage of an innocent man to seek to restrain it; he will find his advantage in continuing through life to despise its excesses.

In favour of Mr. Hastings it was proposed that evidence should be taken to prove the words of which the petition complained; and Major Scott made a speech, in which, after giving his own explanation of the death of Nuncomar, he adduced, as a defence on which he might rely, the circumstance, that after

the facts relating to the death of Nuncomar were known in England, Mr. Hastings had been repeatedly chosen by the Ministers and the Company to fill the high office of chief ruler in India, and upon his return to England had never been called upon for one word of explanation in regard to that extraordinary affair.

That could not be a very sure defence of one party, which possibly was but a severe accusation of another.

In opposition to this proposal, and in order to explode the inquiry, it was moved, that the House do adjourn. After some contention, 158 members voted against ninety-seven, that evidence should be heard; and it was moved, that the short-hand writer be called in. This was not a proper mode, it was said, of proving the words of a member of parliament. And, in cavilling about evidence, the managers showed an inclination, not much better than that of their opponents.

It was moved, and upon division carried, that a Committee should be formed to search for precedents, and the House adjourned.

On the 4th of May the Committee reported that a precedent exactly in point was not to be found. A question then was raised, whether the examination of the short-hand writer should extend to the whole of the speech, or so much of it only as was the subject of complaint. The managers contended for the whole. Mr. Pitt spared not upon them either sarcasms or imputations. The question, urged to a division, went of course with the minister.

The words being proved, which Mr. Burke had

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begun with confessing, it was moved, "That no direction, or authority, was given by this House, to bring as a charge against Mr. Hastings, or to impute to him, the condemnation and execution of Nuncomar." Mr. Pitt described the motion, as a necessary atonement which the House owed to Mr. Hastings for charging him with murder; at the same time disclaiming all intention of throwing blame on the managers. Mr. Fox had not much objection to the motion, as it implied no censure on Mr. Burke, nor restrained him in future from adducing the facts; but he threw out insinuations against the minister, as having belied his professions of fairness and impartiality; and contended that it was inconsistent with the honour and justice of the House to leave men to struggle with a duty, whom they found unequal to its discharge; that in proving a crime, it was essential to the ends of justice to be allowed to adduce every relevant fact: that it was no matter whether the fact was innocent or criminal; and that in courts of law themselves, it was a rule to admit one crime as evidence to prove another; a greater crime as evidence of a less; murder, for example, as proof of a fraud.

Mr. Sheridan represented that he had used the same words a year before, when no notice was taken of them: that Mr. Hastings was familiar with the imputation of causing the death of Nuncomar, for in his defence he had noticed it, and repelled it by denial. With regard to the truth of the allegation, he called upon Mr. Pitt to rise, and say, if he dared, that Nuncomar, if he had not accused Mr. Hastings, would have died the death to which he was exposed.

Nor was this all. Both he and Mr. Fox declared, that if they had occasion in the course of the trial to speak again of the death of Nuncomar, they would speak of it in terms exactly the same with those which Mr. Burke had employed.

"Mr. Pitt said he disregarded the insinuations against himself, but he and his friends should be watchful over the conduct of the managers, and take care they transgressed not the directions of the House.

"Mr. Fox replied, that no tyrant ever behaved in a more barbarous manner over those whom he governed, nor with more treachery and fraud: that the privileges of the Commons were never more invaded, or endangered, within this century, nay, he would say within the last, than they had been within these few days."

In consequence of this altercation, the ministerial party proposed to increase the asperity of the motion, by adding, that the words "he murdered him by the hands of Sir Elijah Impey," ought not to have been spoken. Mr. Fox, after inveighing against the absurdity of condemning and not changing the managers, proposed the following amendment; "Notwithstanding in a former year no notice was taken of the words spoken by another manager to the same effect; and that Mr. Hastings in his defence had considered them as a charge, and given it a reply." Upon his intimating very plainly his belief, that the ministerial party, after finding it convenient to vote for the impeachment, were now at work to defeat it of its end, and through the medium of a courtly censure meanly to convey sentiments which they

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were afraid or ashamed to avow, Colonel Phipps rose to order, describing the words which had been uttered as words not fit for that assembly, and which would not be tolerated in any other place. This being treated by Mr. Francis as an indecent menace, and receiving a severe reply from Mr. Fox, strangers, that is the public, as if something were about to occur which it was not good the public should know, were turned out. Upon their admission, after an hour's exclusion, Mr. Pitt was repeating former arguments; to which, after Mr. Fox had made a reply, the House called impatiently for the question, Mr. Fox's amendment was negatived without a division, and the original motion with its amendment passed by a majory of 133 to sixty-six.[1] This was followed by a motion for a vote of thanks to the managers; but that was treated as premature, and resisted by a vote for the previous question.

The trial was resumed by the Lords on the 5th of May, when Mr. Burke continued his opening speech on the charge relating to presents. He announced with great dignity the proceedings which had taken place in the House of Commons, and the restrictions which they had imposed upon him with

[1] There can be no doubt of the propriety of the decision. The accusation was of too serious a nature to be thrown out at random, merely to create a prejudice against the accused, in the minds of those who were sitting in judgment upon him for charges of very inferior criminality. If the death of Nuncomar was in any way imputable to Hastings, it should have been made matter of positive accusation. It was wholly unwarrantable to denounce him as guilty of murder, merely as a collateral proof of his being culpable of corruption. If it was impossible to substantiate the charge, as Burke well knew that it was, it was most unfair to Hastings to prefer it in so indirect a manner, as should leave him no opportunity of disproving it. With regard to the accusation itself, see former remarks, vol. 3, p. 644, note.—W.

regard to the death of Nuncomar; at the same time declaring that he had used the word *murder* only because he could not find a stronger; that the opinion of which that word was the expression, was the result of a nine years' laborious inquiry; and that it would be torn from him only with his life. On the 7th, which was the next day of the trial, he concluded his speech. It was left to the managers either to produce evidence on that part of the charge which Mr. Burke had opened, or to go on to that, the opening of which was reserved to another speaker; and the first was the mode which they preferred.

On this article of the impeachment it will be nenessary, rather more than on the former articles, to enter into the particulars of the evidence; first, because in the history of the government and people it was fit to confine the narrative to events of which the consequences were important to the government and people, instead of complicating it with questions which had little reference beyond the character of an individual; and, secondly, because, at this stage, a variety of questions, on the admission or exclusion of evidence, arose; questions, the operation of which extended far beyond the limits of any single inquiry, and of which, without a knowledge of the circumstances, a due conception cannot be obtained.

The question, whether the defendant had or had not received presents corruptly, was divided into two parts. The first related to the presents, alleged to have been received previously to the arrival of Clavering, Monson, and Francis, the receipt of which Mr. Hastings had not voluntarily disclosed; the second related to the presents which he had received

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when Clavering and Monson were dead, one just before, the rest after the departure of Mr. Francis for Europe, presents which, after a time, he confessed that he had received, and which he said he received not for his own use, but that of the Company.

The principal object of the managers in the first part of the inquiry was to prove, that the appointment of Munny Begum to the office of Naib Subah was a corrupt appointment, made for the sake of the bribes with which it was attended.

The first part of the proof was to show that the choice of Munny Begum was so improper and absurd, that as no good motive could be assigned for it, so the receipt of bribes was the only rational one it was possible to find.

First, the duties of the office of Naib Subah, as described by Mr. Hastings himself, were numerous and important; and such as could not be neglected, or misperformed, without the deepest injury, not only to the population of the country, but to the East India Company itself. In the long list of those duties, were the administration of justice and police, of which the Naib Subah was not, like our kings, the mere nominal head. The actual performance of a considerable portion of the business of penal judicature (for the civil was mostly attached to the office of Dewan), was reserved to him; and the portion so reserved was the high and governing portion; without which the rest could not at all, or very imperfectly, go on. The same was the case with the police, of which he was the principal organ. The conduct of all negotiations, and execution of treaties, that is, the charge of all the external relations of the

state, though, really, as the agent of the Company, was ministerially vested in him. Nor was the administration of all that related to the person and family of the Nabob, who, though in a dependent condition, still maintained the appearance of sovereignty, a matter of which the performance was as easy as it might seem to be familiar.

That the Court of Directors had the same conception of the importance of the office of Naib Subah, the managers proved by one of their despatches, in which they gave directions to choose for it "some person well qualified for the affairs of government," that is, a person endowed with the rarest qualifications. Nay, so much stress did they lay upon this selection, that they actually pointed it out as one of the most signal proofs which their President and Council could afford, that the confidence they reposed in them was not misapplied.[1]

That Munny Begum, whom Mr. Hastings appointed to this office, was devoid of every requisite qualification for the proper performance of its duties, was, they contended, indisputable, from a variety of facts and considerations. In the first place, she was a woman, that is, a person, according to Oriental manners, shut out from the acquisition of knowledge and experience; acquainted with nothing but the inside of a haram; precluded from intercourse with mankind; and, in the state of seclusion to which she was chained, incapacitated, had she possessed the knowledge and talents for those transactions with the world, in which the functions of government

[1] Letter, dated 28th of August, 1778; Minutes, ut supra, 973.

consist. In the next place they contended that she was a person, not only of the lowest rank, but of infamous life; having not been the wife of Meer Jaffier; but, a dancing girl; that is, a professional prostitute, who caught his fancy at an exhibition, and was placed as a concubine in his haram.[1]

They next proceeded to prove that, when Munny Begum was chosen, other persons were set aside, whose claims were greatly superior to hers.

In the first place, if a lady of the haram of Meer Jaffier was a proper choice, the mother of the Nabob was alive; and she, it was inferred, would have been a fitter guardian of her son during nonage, than a spurious step-mother, a person whose interests were so apt to be contrary to his.

In the next place, if there was any peculiar fitness for the office in a member of the family of the late Meer Jaffier, Ahteram ul Dowla, the brother of that Nabob, and the eldest surviving male of the family, had actually advanced his claims. But as Mr. Hastings had stated a reason for setting him aside, the managers offered to show by evidence that what he alleged was a false pretence.

The reason produced by Mr. Hastings was, that Ahteram ul Dowla had a family of his own; that he might, therefore, be tempted to shorten that life which stood between them and promotion: that his son and he, if Nabob and guardian, would possess an inconvenient, if not a dangerous, portion of power; that the establishment of any male in the office of

[1] See a letter, dated 30th September, 1765, from the President Lord Clive and Council, in which her son by the Nabob is treated as a bastard. Minutes, ut supra, p. 976.

Naib Subah would prevent the Company from availing themselves of the minority, to withdraw from the Nabob a still greater share of his power; and that, until a greater share of power were withdrawn from the Nabob, the authority and even security of the Company were by no means complete. The managers proceeded to show, that this pretext was false; and for this purpose produced a document to prove, that when a different view of the subject favoured the purpose of Mr. Hastings, he made affirmations of a very different sort. He then affirmed, that the Company had already taken from the Nabob every particle of independent power; and that the anticipation of danger from such a quarter, by any possible combination of circumstances, was altogether absurd. "No situation of our affairs," he said, "could enable the Nabob, or any person connected with him, to avail himself, by any immediate or sudden act, of the slender means which he has left to infringe our power, or enlarge his own. He has neither a military force—authority in the country—foreign connexion—nor a treasury."[1]

Having given such evidence, that the pretexts on which Mr. Hastings rejected other parties were false, the managers proceeded to give evidence that the pretexts were equally false, on which he made choice of Munny Begum. The first was, that it was inexpedient to leave in existence the office of Naib Subah. The second was, that the annual charge of three lacs of rupees, the salary of that officer, was an expense of which the East India Company would

[1] President's Minute in Consultation, 28th July, 1772. Minutes of Evidence, ut supra, p, 973—976.

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not approve. The third was, that the existence of such an officer lessened the consequence of the Company's own administration. The fourth was, that it was expedient to divide the duties among three officers, one, the guardian of the person and household of the Nabob; a second, the steward of that household, under the title of Dewan; a third, the superintendent of judicature and police, under title of Roy Royan of the Khalsa. And a fifth was, that Munny Begum, as widow of Meer Jaffier, had a peculiar fitness for the office of guardian of the Nabob. To show that the pretext of abolishing the office of Naib Subah was false, the managers brought evidence to prove that it still existed; as all the powers of it were vested in Munny Begum, other persons being nothing but agents and subordinates dependent upon her will: "You," said the Board, "are undoubtedly the mistress, to confirm, dismiss, and appoint whomsoever you shall think fit in the service and offices of the Nizamut; they are accountable to you alone for their conduct, and no one shall interfere between you and them." That the pretext relating to the expense was false, was proved by the fact, that no diminution was ever attempted, but the whole three lacs were given to Munny Begum and her subordinates. The pretext that the dignity of any person administering what Mr. Hastings himself called the slender means of the Nabob, could lessen the consequence of the Company's government, upon which both he and the Nabob depended absolutely for all they possessed, is so evidently false, as to be ridiculous. That the pretext about dividing the duties was false appeared from the fact, that they

were not divided, any further than by name; Munny Begum being the absolute mistress of all the instruments, just as if she had been appointed the Naib Subah in title. And that it was a false pretext to rest the fitness of Munny Begum upon her being the widow of Meer Jaffier, was proved by the fact that she was not his widow, that she had never been his wife, but his concubine, and that her offspring had been treated as spurious by the English government.[1]

Having thus shown, or endeavoured to show, that the choice of Munny Begum to fill the office, or supply the place of Naib Subah, could not be accounted for upon any other supposition than that of pecuniary corruption, the managers next proceeded to prove that Mr. Hastings, as well as his creatures, did actually receive large sums of money for that appointment. And at this point began the great efforts which were made on the part of the defendant to exclude evidence; and so successfully made, that nothing more than a vigilant application of the rules which his lawyers laid down, and the lords confirmed, is necessary, in the case of a ruler who has a little cunning, to render conviction of delinquency all but impossible.

To one of the preliminary points, the managers wished to adduce the evidence of a letter of Mr. Hastings. The original letter, however, was not to be found. But there was a copy of it in the book at the India House, into which all letters were transcribed; and there was a printed copy of it in the

[1] Minutes, ut supra, p. 978—980.

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report of the Secret Committee of the House of Commons. The counsel for the defendant objected; and the Lords determined, that before any of these copies could be received as evidence, the managers must prove three points; first, that the original letter had existed; secondly, that now it could not be found; thirdly, that the alleged copy was exact. All these points might have been determined immediately, had not one of the darling rules of the lawyers, for the exclusion of evidence, shut up, on this occasion, the source from which perfect evidence might have been immediately derived. Had the real discovery of truth been the direct and prevailing object, there stood the supposed author of the letter; he might have been asked, upon his oath, whether he did write such a letter or not; and the question would have been decided at once. Oh but! say the lawyers, this would have been to make him criminate himself. Quite the contrary, provided he was innocent; if guilty, the lawyers will not *say*, that his guilt ought not to be proved. Upon the strength, however, of the lawyers' rules, this instrument for the discrimination of guilt from innocence was not to be used.

Whereas Mr. Hastings had the express commands of the Court of Directors, dated in August, 1771, to make it appear in the Nabob's accounts for what particular purpose every disbursement was made, and yet nothing was exhibited in those accounts but general statements of so much expended, while it was ascertained that Mr. Hastings had given no orders agreeably to the commands of the Directors, and that inaccuracies prevailed in the statements

that were given; a strong presumption was thereby created against the Governor-General, because he had thus provided a grand channel through which the current of presents might flow into his pockets without the necessity of an entry, sufficient to detect them, in any books of account. After the statement of this presumption, the managers proceeded to the exhibition of direct testimony, that bribes were received by Mr. Hastings, for the appointment both of Munny Begum and her subordinates. They began with the information received from the Raja Nuncomar, that Mr. Hastings had accepted a present of two lacs and a half from Munny Begum for appointing her Regent during the minority of the Nabob; and a present of one lac from himself for appointing his son, the Raja Gourdass, steward under Munny Begum. The documents produced were the Minutes of Consultation of the President and Council at Calcutta. The reading was not interrupted till it came to the examination of the Raja, before the Council, on the subject of the charges which he had preferred. The learned counsel represented that it ought not to be read, First, because it was not upon oath; Secondly, because it was taken in the absence of Mr. Hastings; Thirdly, because it was not before a competent jurisdiction; Fourthly, because the Raja was afterwards convicted of a forgery, committed before the date of the examination. On the objection as to the want of an oath, it was shown to have been the practice of Mr. Hastings to avail himself of the allegation that an oath was not a requisite to the testimony of a noble Hindu, of whose religion it was a

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breach. Besides, it can, on reflection, be regarded by no body, as adding any thing considerable; and may perhaps, be, with justice, regarded as adding nothing at all, to the securities for truth, to compel a man, who otherwise would certainly affirm a lie to the judge, to perform a short religious ceremony beforehand. In the case of the man who otherwise would not tell a lie to the judge, the oath evidently is of no use whatever. Further; testimony admits of degrees; one testimony has so many of the securities for truth, another has so many less, another fewer still; the value of each is estimated by the judge, and even the lowest is reckoned for what it is worth. So, when the oath is wanting to an article of testimony, it is only one of the securities that is wanting; and the testimony may be worthy of the highest possible credit on other accounts. As to the objection drawn from the absence of Mr. Hastings, it was treated as not merely unreasonable, but impudent. Why was Mr. Hastings absent? Because he determined not to be present: and if a man is thus allowed to fabricate by his own act an objection to evidence, and then to employ it, he is above the law. The objection to the competence of the jurisdiction was founded upon a disallowed assumption, that the Council, after it met, was dissolved by the simple fiat of the President, though the majority, whose vote was binding, determined it was not. As to the conviction of Nuncomar, the managers declared that they were only restrained by the authority of those whom they represented from asserting that it was a conviction brought about for the very purpose to which it was now applied, the suppression of evi-

dence against Mr. Hastings. I shall add, that the rule upon which the objection was founded, is pregnant with the same sort of absurdity and injustice with the other rules of exclusion, examples of which we have already beheld. If a man has committed a crime, ought he therefore to be endowed with the privilege of conferring impunity on every crime committed in his presence, provided no body sees the action but himself? The evidence of the greatest criminal is of so much importance, that pardon is commonly granted to any one of a combination who gives evidence against the rest.

Upon the whole, with regard to this document, it is most obvious to remark, that it is contrary to the nature of things to suppose that evil should have arisen from hearing it read; because every observation which could tend to show how little on the one side, or much on the other, was its value as an article of evidence, it was the business of the parties to present; and this the Lords were surely as competent to determine as the still more important questions which it behoved them to decide. When the judge has heard the information which is tendered to him, he can ascertain whether it does or does not contain any of the matter of proof, and if any, in what precise quantity, little or great: When of the evidence tendered to him there is any portion which he has not heard, he can determine nothing about it; and may possibly have lost, rejected, and destroyed that very information on which the power of righteous judgment depended,

Another observation which might have been urged with irresistible force of reason was, that the pro-

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priety of receiving such evidence was already weighed and determined by the Legislature, which, in constituting a new Court of Judicature for the trial of offences committed in India, had enacted, that all documents, of the nature of that which was now tendered in evidence, should be received as evidence. The assent of the Lords was included in every act of the Legislature; and that very assembly, therefore, which had already decreed, in its legislative capacity, that such evidence was useful, now, in its judicial capacity, decreed that it was the reverse.

For the purpose for which the managers now adduced the examination of Nuncomar, it was not necessary, they said, to insist upon the truth of the testimony left behind him by that unfortunate man. They meant to exhibit the behaviour which Mr. Hastings had manifested, when accusations of such a nature were preferred against him; and by the relation of the behaviour to the charge manifest the probability of guilt. The demeanour of a criminal was circumstantial evidence of his crime.

If the examination was to be read for the sake alone of the circumstantial evidence afforded by the demeanour of Hastings, not for the purpose of adducing as evidence the testimony itself, the Counsel expressed a sort of willingness to give way. But the managers refused to bind themselves to any conditions, in limitation of what they claimed as a right. On a suggestion from Lord Kenyon, the Lords adjourned to their own chamber to consult.

On the next day of the trial, the Lords announced, "That it is not competent for the managers for the Commons to produce the examination of Nuncomar

in evidence; the said managers not having proved, or even stated any thing as a ground for admitting such evidence, which, if proved, would render the same admissible." If the reason which precedes be well founded, admissibility in regard to relevant evidence ought never to be a question.

The managers desired leave to withdraw. Upon their return, Mr. Burke declared, it was with equal surprise and concern they had heard the determination of their Lordships: It was a determination which exceedingly increased the difficulty of bringing criminality to conviction: To the Lords, however, belonged the power of determining: It remained for the managers to submit.

At a consultation of the Board of Council at Calcutta, on a subsequent day, when Mr. Hastings was present, it appeared that the minutes of consultation of the day on which the examination of Nuncomar was taken, including the examination itself, were read; and that the minutes of that day were signed by Mr. Hastings, and by him transmitted to the Court of Directors. The managers proposed that these minutes should be read. The counsel for the defendant objected; as this was to introduce obliquely that very document of which the direct introduction was forbidden by the Court. The Lords, upon a second suggestion from Lord Kenyon, withdrew to deliberate, and determined, "That the circumstance of the consultation of the 13th of March, 1775, being read at a consultation of the 20th of March, 1775, at which Mr. Hastings was present, does not of itself make the matter of such consultation of the 13th of March, 1775, admissible evidence." Mr. Burke pro-

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fessed that, worded as the resolution was, he could not say that he perfectly understood it. It was affirmed that one particular circumstance did not render the evidence in question admissible evidence. But perhaps there were other circumstances which might have that happy effect. If so, the managers, as not being technical men, claimed the same assistance as was due to men without professional assistance pleading their own cause.

The Lord Chancellor replied, that what was *said* or *done* by Mr. Hastings was evidence against him; not what was said or done by other persons; for then calumny might stand as evidence of guilt. Something said or done by Mr. Hastings was therefore necessary to render this examination admissible evidence.

Mr. Fox rejected this decision. *Forbearing* to do, was often guilt, or evidence of guilt, as well as *doing*. There are circumstances in which, if charges are made against a man, and instead of promoting he does all in his power to prevent inquiry, he gives evidence, and satisfactory evidence of his guilt. This was the evidence which the managers desired to present to their Lordships, and which their Lordships were so unwilling to receive. If this kind of evidence were rejected, Mr. Burke would give joy to all East Indian delinquents. "Plunder on. The laws intended to restrain you are mere scarecrows. Accumulate wealth by any means, however illegal, profligate, infamous. You are sure of impunity: for the natives of India are by their religion debarred from appearing against you out of their own country, and circumstantial evidence will not be received." If the

new principle were established, that acts of omission were not evidence, Mr. Fox observed, that Indian delinquents were rendered secure. They would take no notice of any charges preferred against them ; and thereby render inadmissible the only evidence by which guilt could be proved.

The managers, therefore, proposed to read the whole of the consultation of the 20th of March, including that of the 13th, in order to show the demeanour of Mr. Hastings. Then the House adjourned to the chamber of parliament. Next day the resolution of the Lords was announced, "That the consultation of the 13th of March, 1775, cannot now be read." Mr. Burke said that how great soever the pain with which he heard the resolution, he was consoled by the use of the word *now ;* which left him room to hope, that the evidence in question might be admitted another time.

As Cantoo Baboo, the Banyan of Mr. Hastings, when summoned by the Council to give evidence on the subject of the charges of Nuncomar, was ordered by Mr. Hastings not to attend, the managers affirmed that this was something *done* by Mr. Hastings ; and that the condition prescribed by the Chancellor was therefore fulfilled. The Lord Chancellor asked what the Council for Mr. Hastings had to offer against this plea. Mr. Law said, they possessed their Lordships' decision for excluding this evidence, and claimed the benefit of it. The managers conjured the Lords to reflect, that in the sort of cases before them, to adhere to the rules of evidence upheld by English lawyers, was to let loose rapine and spoil upon the subjects of government. The managers were then asked, "if

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they would state the whole of the circumstances upon which they meant to rely, as a ground to entitle them to read the proceedings of the 13th of March, 1775." The managers desired leave to withdraw. Upon their return they expressed their regret, at not being able to comply with the request of the Lords. In the course of the trial various circumstances might arise, which did not at present occur to their minds. At present they held it enough to adduce one ground which to themselves appeared satisfactory, and upon this they craved the judgment of the Court. The Lords adjourned.

At this point, the Lords demanded to be enlightened, or kept in countenance, by the sages of the law. The following question was referred to the twelve judges. "Whether it be competent for the managers to produce an examination without oath by the rest of the Council, in the absence of Mr. Hastings the Governor, charging him with corruptly receiving 3,54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors as a proceeding of the said Councillors, in order to introduce the proof of his demeanour thereupon; it being alleged by the managers for the Commons, that he took no steps to clear himself, in the opinion of the said Directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said Councillors of his servant Cantoo Baboo." To this the judges returned for answer, "That it is not competent for the managers to produce an examination, without oath, by the rest of the Councillors, in the absence of Mr. Hastings the Governor, charging

him with corruptly receiving 3,54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors, as a proceeding of the said Councillors, in order to introduce the proof of his misdemeanour thereupon." It being carried in the affirmative that the Lords do agree to this opinion, the Court was resumed, and the managers were informed, "That the examination of Nuncomar, and the rest of the proceedings of the Councillors, on the 13th of March, 1775, after Mr. Hastings left the Council, ought not to be read."

The managers began now to complain bitterly, that the resolutions of the Lords were pronounced, without the accompaniment of the reasons on which these resolutions were founded. The managers affirmed that they were thus left completely in the dark, and embarrassed in all their proceedings. This was a point of the highest importance, and it is to be regarded as one of the most characteristic parts of the exhibition then made of itself, by the tribunal before which Mr. Hastings was tried. To issue decisions, without presenting the reasons, is to act the part not of a judge, but of a despot. The mandate of a despot rests on his will. The decision of a judge is founded on reasons, or it deserves any thing rather than the name. But if the decision of the judge is founded on reasons, it is of infinite importance that they should not be confined to his own breast. In the first place, the necessity of stating reasons is one of the strongest securities against all the causes of bad decision, the ignorance

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of the judge, the negligence of the judge, and the corruption of the judge; against the ignorance of the judge, by making it visible and ridiculous; against the negligence and corruption of the judge, by making him know that he himself must be the indicator of his own offences, the herald as well as author of his own shame. This is one, but not the only benefit derived from imposing upon judges the necessity of giving the reasons upon which their decisions are grounded. The public do not enjoy the advantages of security, unless they have what is called the *sense* of security, or the belief that they are secure. Unless the administration of justice yield the *sense* of security, it fails of accomplishing one of the most important of its ends. But of all possible means to convey this sense of security one of the most potent undoubtedly is, to make known to the people invariably the reasons upon which the decisions of the judges are founded. It is this alone with which the people can, or ought to be satisfied. How can they know, that a decision is just, when they are ignorant of its grounds? It is to be considered as circumstantial evidence (and evidence which in general ought to be held conclusive), when reasons are not given for a judicial decision, that it is for one of two causes; either, 1. because no good reasons can be given; or 2. in order to favour a practice according to which decisions, for which no good reason can be given, may be pronounced at any time.

It is therefore a fundamental axiom in the science of jurisprudence, that without reasons strictly accom-

panying every judicial decision, the duty of the judge is most imperfectly performed, and good judicature altogether impossible.[1]

With regard to the resolution itself, Mr. Burke proclaimed, in the face of the Court by which it was formed, "That it held out to future governors of Bengal the most certain and unbounded impunity. Peculation in India would be no longer practised, as it used to be, with caution and with secrecy. It would in future stalk abroad in noon-day, and act without disguise; because, after such a decision as had just been made by their Lordships, there was no possibility of bringing into a court the proofs of peculation."

The fact is of the highest importance. The rules of evidence, deplorably adopted by the Lords, are so many instruments of protection to the crimes of public men in public places; that is, crimes, from the very nature of the case, more extensively mischievous than all others; and crimes of which the existence can seldom be legally ascertained except by the very sort of evidence, which the Court, set up in this country to punish them, makes rules to exclude.

Besides the examination of the Raja Nuncomar,

[1] For the Lords, to have assigned reasons, however unanswerable, would have only furnished the Commons with occasion of cavil—and this no doubt induced them to refuse their formal communication. For the purposes of justice all that was really essential was performed, for although not formally communicated, the grounds of the decisions of the Lords were fully known to the managers of the Commons, as they were the consequence of discussions which were publicly reported. The managers had thus ample opportunity of controverting any doctrines adverse to their cause without violating the privileges of parliament, or losing time and dignity in personal controversy. The character and relative positions of the parties do not admit of any analogy to the discharge of his duty by an individual judge.—W.

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there was recorded in the consultation of the 13th of March, a letter from Munny Begum, which stood, according to the managers, upon grounds of its own. Its authenticity was fully proved by Sir John D'Oyley, Mr. Auriol, and a Persian Moonshee who had translated it, and after having examined the seal, pronounced it to be the seal of Munny Begum. This person, whose character and rank Mr. Hastings placed very high, had stated in this letter her having given a large sum of money to Mr. Hastings for appointing her regent during the minority of the Nabob. The evidence of this letter the managers proposed to adduce. The counsel for the prisoner objected. The ground of the objection was, that the letter was recorded in those minutes of the consultation of the 13th of March, which the Court had refused to admit. The House sustained the objection, and forbade the letter to be read.[1]

The next part of the proceedings is truly remarkable. "The managers desired that Philip Francis, Esq., might be called in, to prove that a letter from Munny Begum to the Raja Nuncomar, charging Mr. Hastings with a receipt of three and a-half lacs of rupees, was delivered in to the Council on the 13th of March, 1775, and that Mr. Hastings knew the Begum had written such letter." The witness was not allowed to speak to the consultation of that day, or to the letter. The reason was, because the proceedings existed in writing, the letter existed in

[1] The circumstances respecting the proposal to produce this letter, and the decision upon it, appear more distinctly in the Hist. of the Trial of Warren Hastings, Esq. part ii. p. 57, than in the Minutes of Evidence, where there is obscurity, and probably an omission.

writing; and that which itself existed in writing was better evidence than parole testimony to its contents. The witness was not allowed to speak, because there existed a writing that was better evidence; and that writing which was better evidence the Court had determined they would not receive! The witness was not allowed to speak, on the pretext that something else was better evidence, while the Court itself had determined that the said something else was not evidence at all!

When the accounts of Munny Begum, in her quality of Regent, were called for by the Board of Council, after the arrival of Clavering, Monson, and Francis, a large sum appeared, of the mode of disposing of which no explanation was given. A commission, at the head of which was placed Mr. Goring, was sent to Moorshedabad, to inquire. Upon this investigation came out the declarations of Munny Begum, that the sum not accounted for had, at the time of vesting her with the Regency, been given to Mr. Hastings and his attendants. Certain papers, stating the receipt, by Mr. Hastings, of one lac and a-half of rupees, papers transmitted by Mr. Goring to the Board at Calcutta, received by them, recorded without any objection on the part of Mr. Hastings, and transmitted by him, still without objection, to the Court of Directors, it was proposed, by the managers, to read. The council for Mr. Hastings insisted, that these papers were not direct evidence, as wanting the requisite securities of oath and authentication; and not circumstantial evidence, because no act of Mr. Hastings, as required by the Court, connected them with himself. The Lords

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determined that the papers ought not to be read. And yet that there was matter of evidence in papers so delivered, and that there might be in the demeanour of the person whom they regarded, it is impossible to deny. That the papers did contain the declaration of Munny Begum, was susceptible of the completest proof. That her declaration, not judicially given, and not subject to cross examination, was of much less value than if it had received these securities, is no less true; but still, as far as it was not invalidated by other circumstances, it was of some value, and ought to have been counted for what it was worth. And if Mr. Hastings, instead of taking the course which was natural to an innocent man, took that which a consciousness of guilt would naturally prescribe, this demeanour would be circumstantial evidence against himself. Instead of permitting light to come in from these two sources, light of which the value, whatever it was, would appear, when it was seen and examined, the Lords resolved to shut it out, without permitting it to be seen at all.

The managers next offered to produce, in evidence of the same facts, an original Persian letter, under the hand and seal of the Munny Begum, signed by the Nabob, and transmitted by Mr. Goring to the Board. And as an act of demeanour, fulfilling the condition required by the Lords to constitute any document a link in a chain of circumstantial evidence, they stated that Mr. Hastings, after Munny Begum was freed from all influence but his own, never attempted to invalidate the testimony she had given.[1]

[1] With respect to Mr. Hastings personally, I am anxious to observe,

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The House determined that the letter should not be read.

The Managers next proposed to examine Mr. Goring, in order to prove that Munny Begum delivered to him a paper, in the Persian language, under her own hand, stating, that Mr. Hastings had received from her a lac and a half of rupees, under colour of money for his entertainment. The counsel for the defendant objected to evidence of any consultation with Munny Begum, Mr. Hastings himself not being present. They objected also to the production of any paper which had not been delivered in the presence of Mr. Hastings, and the contents of it read to him. The Managers offered the paper as an original instrument, which possessed all the securities for truth required by the Indian laws, being under the seal of the Begum, and attested by the Nabob, while it was contrary to the manners of the country for a woman of rank to appear in public, or take an oath. The House decided that the paper could not, upon these grounds, be admitted as evidence against the defendant.

As Major Scott, agent of Mr. Hastings, with full, and almost unlimited powers, had delivered to the Select Committee of the House of Commons, a translation of a letter from Munny Begum to Mr. Hastings, in which she affirmed the delivery to him of one lac and a half of rupees, the managers contended that this was a perfect acknowledgment of the letter on the part of Mr. Hastings; and that, there-

that this affords a presumption of innocence; at least of the truth of his allegation, that the sum in question, which was given him for entertainment-money, as he had never denied it, so he never meant to conceal.

fore, the letter ought to be read. The matter was pressed by the managers in every possible direction: and every expedient which they could imagine for opening a way to its reception was tried, but in vain. The lawyers for the defendant, burying in silence a rule which on another occasion they would have strained their lungs to proclaim, *Qui facit per alium facit per se*, insisted that what is done for a man by his agent, is not done by himself; and that the recognition of a piece of evidence by Major Scott, was not recognition by Mr. Hastings. After some days of contention, the Lords retired to their chamber to deliberate; and, on the next day of the Court, came out, in the usual oracular style, the response, "That the Persian paper, purporting to be a letter from the Munny Begum, and the translation of the same, offered in evidence by the managers for the House of Commons, ought not to be read."

Beside the absurdity already disclosed, of refusing to receive an article of evidence, because it is not so strong as it would have been, had it possessed more of the causes of strength; while the interests of truth require that the exact value of it should be ascertained, and that it should not be thrown away, but counted for what it is worth; it is obvious to common sense that the question agitated on this occasion so long and vehemently before the Court, might have been settled in one instant, by barely asking Mr. Hastings, if he acknowledged the writing as a letter to himself from Munny Begum.

The vulgar notion, that a man should not be required to give evidence which may operate against himself, is then only rational, when the law is so bad,

that it really ought not to be executed; and when humanity approves of every subterfuge by which men may escape from its detestable fangs. That this was once the case with the law of England, as it is the case with the laws of all countries, in times of ignorance, and times of despotism, is undoubtedly true; and then it was, that the vulgar notion, and the rule founded upon it, received their birth. In times when the law was so bad, and the King and other great men so powerful, that they were able on most occasions to use the law as a commodious instrument, for executing upon individuals the dictates of their vengeance, their jealousy, their avarice, or their caprice, that great instrument for defeating the law, namely, the rule, that a man shall not be compelled to give evidence against himself, had often a very obvious though a temporary, and limited utility. Like most other matters of law it obtained its existence more immediately from the interests of the great men. In times of rudeness, which are times of turbulence, contests are frequent for the crown; and the great men are ranged on different sides. If it happens to them sometimes to be on the winning side, it is equally incident to them to be on the losing. When that happens, the law will be employed to destroy them. And as they live in such a state of things that all foresee they may very probably stand in this predicament themselves, they all eagerly concur in establishing the credit of a rule that shall render it very difficult for the law to convict them; in other words, shall afford them many chances to escape. The moment, however, at which the law becomes good, and no man has power to

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wrest it iniquitously to his own purposes, the case is altered. The moment the law becomes such, that it really ought to be executed, that it is good for the community it should be exactly executed, that it cannot without mischief to the community, in one instance, be defeated of its execution, then every subterfuge by which he who has infringed the law may escape, is an evil; then every thing which guards the truth from discovery, is a cause of mischief; and, surely, it is one of the most effectual expedients for guarding the truth from discovery; surely it is one of the most effectual of all the subterfuges by which he who has infringed the law may escape its penalties, if he who knows the most of the circumstances shall be protected in concealing what he knows.

Mr. Burke complained of the inextricable perplexity in which the managers were involved by these naked decisions. If reasons were given, they would know, that wherever the same reasons applied, the same decision would be pronounced. Issued without any reason, every decision stood for itself alone; was confined to an individual, not extended to a species; and furnished no rule for anything else. They doubted not but the resolution of the House was founded upon *technical grounds.* But "in the case on which their Lordships had last decided, the managers had offered in evidence a paper, proved to have been written by Munny Begum, and transmitted to Mr. Hastings—they offered also a translation of that paper, delivered to the Committee of the House of Commons by the very agent of Mr. Hastings—they proved that these papers had

been sent to the prisoner in the Eleventh printed Report of that Committee, and that when he drew up his defence he must have had them before him. That papers so substantiated, should have been rejected by their Lordships, must be a matter of astonishment to all the thinking part of mankind, who should happen to be unacquainted with the *technical* grounds on which their Lordships had resolved that these papers were not to be received."[1]

During these contentions two incidents occurred, the importance of which requires, that they should here be presented to view. It was given out, as a *dictum*, by Mr. Law, the defendant's counsel, That every accusation brought against a man, and not

[1] The expressions are here taken from the report of the speech, in the History of the Trial, ut supra, part ii. p. 64. Mr. Burke, on this occasion, took pointed notice of a circumstance of some importance in the history of the public life of Mr. Hastings. Having warned the Lords of the wide door they laid open for the escape of guilt, by sustaining the disavowals which the guilty found it convenient to make; "In the case of Mr. Hastings," he said, "there appeared to be a system of *disavowals*. The prisoner once appointed an agent, who, in *his* name, made a formal resignation of the Government of Bengal. But the principal afterwards disavowed this act of his agent, and strenuously resisted it, though the ruin of the British empire in the East might have been the consequence of it.

"At another time he delivered at the bar of the House of Commons, (*as his own*) a written defence against the charges then pending against him in that House. But afterwards, at their Lordships' bar, he *disavowed* this defence, and produced evidence to prove that it had been drawn up by others, and not by *himself*, and that, therefore, he ought not to be accountable for the contents of it.

"In the case immediately before their Lordships, it had appeared in evidence, that Major Scott was the agent of the prisoner, and that his powers were as unlimited as words could make them, except in one point only. This agent delivered to the Committee of the House of Commons, the papers of which he was then speaking; certainly with some view, and probably to serve his principal, for he delivered them *unasked*. But now he *disavowed* all authority for such delivery."

1789. proved, was a calumny and slander. "Mr. Burke," says the historian of the trial, "replied, with much indignation, that he was astonished the learned gentleman dared to apply such epithets to charges brought by the Commons of Great Britain, whether they could or could not be proved by *legal* evidence. It was very well known that many facts could be proved to the satisfaction of every conscientious man, by evidence which, though in its own nature good and convincing, would not be admitted in a court of law. It would be strange, indeed, if an accusation should be said to be slanderous and calumnious, merely because certain rules of law declared that evidence not to be admissible in law, which would carry conviction to the breast of every man who read it."[1] But this observation, pointed as it was in the particular case, was too much limited to that particular case; as was, indeed, the misfortune of most of the instruments with which Mr. Burke endeavoured to parry the weapons of the lawyers. The *dictum* of the lawyer is *universally* mischievous, and also contemptible; and ought to have been proved to be so; the efficacy of it, as far as it is allowed to have any, is to provide impunity for crimes. When is it known that an accusation can be proved? Never, till the cause is tried before the judge. If an accusation must, therefore, never be brought (assuredly a calumny ought never to be brought), unless it is known that it can be proved, an accusation ought never to be preferred at all. There ought to be no accusation of guilt; and of course, no trial; and no

[1] History of the Trial, ut supra, part ii. p. 62

punishment! If, in order to escape from these atrocious consequences, the lawyer will not say that it is necessary a man should *know* his accusation can be proved, but declare it is enough provided he *believes* that it can be proved, the wretched *dictum* is wholly given up. The fact is, that presumption, and often a very slight presumption, may not only justify, but urgently demand accusation. According to the vile doctrine of the lawyer, every indictment found by the grand jury, upon which a verdict of guilty is not given at the trial, is a calumny; and yet the grand jury proceed so purely upon presumption, and are so precluded from the possibility of knowing whether the accusation can be proved, that they can hear evidence only on one of the sides.

The other incident is closely connected with the foregoing. Mr. Law, whose native audacity had, by the support which he found he received, and the indignities put upon the accusation, been gradually rising to a tone of great disrespect to the managers, had now broken out into such language, as the House thought it necessary to rebuke for indecency. Mr. Law defended himself by saying, he did not mean to apply the terms *slander* or *calumny* to any proceeding of the House of Commons; but he had the authority of that House for declaring, that the Honourable Manager had used *slanderous* and *calumnious* expressions, not authorized by them. "Mr. Fox," says the historian of the trial, "took fire at this expression. He said it was indecent and highly irregular, in an advocate, to allude to what had taken place within the walls of the House of Commons: that the learned counsel had done worse, he had *misrepresented* that

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to which he had presumed to allude: he had charged the whole body of the Commons with having sent up slanders in the shape of charges: and he had pronounced the deputies of the Commons calumniators, merely because they offered in evidence those very documents, on the authority of which the Commons had pronounced the charges to be well-founded, and sent them as articles of impeachment to the Lords." Mr. Law defended himself acutely from the impropriety of alluding to any proceeding in the House of Commons, by affirming that he alluded only to what the Honourable Manager himself had told them of the proceedings of that House. Mr. Fox said, that this was a new misrepresentation; their Lordships had not been told that any thing which had fallen from the managers had been designated by the House of Commons, slanderous or calumnious; nor any thing which could be tortured into such a meaning.

Mr. Fox would not proceed in the trial, until the Lords should give an opinion on this language. If that was refused, he must return to the Commons for fresh instructions.

The words were taken down, read to their author, and recognised. It was proposed that the Lords should withdraw to consider them. But a mode was found of giving satisfaction to the managers without this interruption. The Lord Chancellor, it was agreed, should admonish the learned counsel, That it was *contrary to order* in the counsel to advert to any thing that had passed in the House of Commons: That it was *indecent* to apply the terms slander or calumny to any thing that was said by

their authority: And that such expressions must not be used.[1]

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The managers next proceeded to prove, that when Mr. Hastings became master of the votes of the Council, he re-appointed Munny Begum, and the Raja Goordass, to the offices from which the majority of the Council had removed them, after those persons had presented public official accounts charging him with the receipt of three and a half lacs of rupees. This was an act of Mr. Hastings, in relation to these accounts, which, the managers contended, fulfilled the condition required by the Lords for receiving them. The counsel for the defendant produced his objections. The managers answered. The counsel replied. The Lords withdrew to their chamber to deliberate. They asked the opinion of the twelve judges. The judges required a little time. After an intermission of proceedings from the 17th of June to the 24th, the Lords met in Westminster Hall, and informed the managers, "That the accounts last offered by them in evidence ought not to be read."

Before any further proceedings commenced, it was proposed by Lord Portchester, one of the Peers, that certain questions should be referred to the judges. It was according to form, that this business should be transacted, by the Lords, in their chamber of parliament. To this they returned. And at six o'clock in the evening, they sent a message to the Commons, that they had adjourned the further proceedings on the trial for six days. When they met on the 30th in Westminster Hall, no communication of what had

[1] History of the Trial, ut supra, part ii. p. 62, 63.

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passed in their chamber of parliament, was made to the parties. And the managers for the Commons were desired to proceed.

Upon their adjournment, however, on the 24th, the Lords had spent the day in debate; and agreed to proceed with the further consideration of the subject on the 29th. On that day, they went into a committee, "To inquire into the usual method of putting questions to the judges and receiving their answers in judicial proceedings." A great number of precedents were read. There was a long debate. At last it was determined, "That the proceedings on the trial of Warren Hastings, Esq. had been regular, and conformable to precedent in all trials of a similar nature."

It had been agreed at an early period of the trial, that of the documents received in evidence only so much as referred strictly to the point in question should be read; and that they should be printed entire by way of appendix to the minutes. In this way, a letter of Mr. Goring, reporting the statements made by Munny Begum relative to the money received by Mr. Hastings, had been printed. This report the managers now desired might be read. As printed, by order of the peers, to give information on the subject of the trial, it was already in evidence before them. A long contention ensued. The Lords adjourned twice to deliberate, on two separate points. They at last determined, "That no paper ought to be read merely because it is printed in the appendix; and, therefore, that the letter of Mr. Goring, last offered in evidence, ought not to be read."

The managers offered the letter again, and urged

its acceptance, on two other grounds; First, as part of a consultation which had already been read, and applied to the same subject; Secondly, as rendered evidence by the demeanour of Mr. Hastings, who had requested the Court of Directors to read and consider it. The objections of the counsel were made. The usual reply and rejoinder were heard. The managers were asked, "If the above were the whole of the grounds upon which they put the admissibility of the papers offered: To which they made answer, That they were. The House adjourned to the chamber of parliament." The next day of the trial the managers were informed, that "the letter ought not to be read."

The managers after this proceeded to prove, that when Mr. Hastings, as soon as he recovered an ascendency in the Council, re-established Munny Begum in the regency, the pretext upon which he grounded this proceeding, namely, the will of the Nabob, who had a right to make the appointment, was false, and impostrous; in as much as the Nabob, according to Mr. Hastings himself, according to the Judges of the Supreme Court, and according to the known facts of his situation, had no will; and was nothing but a creature in the hands of Mr. Hastings. They also offered proof, that this proceeding was condemned by the Court of Directors, and that it was injurious to the government, and to the interests of the people. To the evidence tendered for this purpose, but little opposition was raised. And here the case for the managers upon the first part of this article of the impeachment was closed.[1]

[1] See the Minutes of Evidence, ut supra, p. 953—1101, with the History of the Trial, ut supra, part ii.—M. The greater part of this

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Before proceeding to open the question upon the second part, the Lord Chancellor requested to know to what length of time it appeared to the managers that their proceedings on this branch of the subject would extend. As he received an answer, importing that several days would be requisite, even if no delay was created by the lawyers in objecting to evidence: and as these communications seemed to point to a design of adjourning further progress in the trial, till the beginning of the next session of parliament, Mr. Hastings rose, and made a very humble and pathetic speech, complaining of the hardships of the trial, and earnestly deprecating delay. His life, he said, would not suffice, if this prosecution proceeded at the pace at which it had begun, to see it to an end. He affirmed, but qualifying the assertion carefully, that it might not appear offensive to the Lords, that he would have pleaded *Guilty*, had he foreseen the space of time which the trial would consume. He

second year of the trial was occupied with disputes in regard to the evidence, and it is urged in the text that these disputes originated in the technical objections of the lawyers to the evidence tendered by the managers. It is clear from a perusal of the proceedings, however, that the legal objections were provoked by the tenacity of the managers in insisting upon what was quite as technical as the legal arguments by which they were defeated—the formal recognition by the Court, of documents, which, however exceptionable as legal proof, had been all along admitted to be authentic. The main fact—that alone of an equivocal appearance, the receipt of money from the Begum, had been acknowledged, and the money had been accounted for,—and the appointment of her to the chief authority at Murshedabad, was matter of public notoriety. Nothing more could have been proved against Hastings, had the documents been received as testimony, and their production, therefore, was merely designed to raise in the minds of the judges a personal prejudice against him. The attempt was, with good reason, therefore, resisted by the counsel for the defence, who displayed, throughout the discussion, quite as much talent as was enlisted on the side of the prosecution.—W.

could not frame, he said, any specific prayer to their Lordships, nor could he press them to a greater waste of their time, at so advanced a period of the season; but if the managers could specify any such limited period as their Lordships could devote, to close the impeachment, which he had been informed was to end with this article, he would rather consent to wave all defence, than postpone the decision to another year. The House adjourned to the chamber of parliament, where it was agreed to proceed on the trial on the first Tuesday in the next session of parliament.

On the 16th of February, 1790, the business of the trial, now prolonged to the fifty-sixth day, was resumed. What remained of the sixth article of impeachment, and a part of the seventh, were opened by Mr. Anstruther. And on the 18th of February, which was the fifty-seventh day of the trial, evidence began to be heard.

A letter was produced, dated 29th of November 1780, from Mr. Hastings to the Court of Directors. In this letter the Directors were told, that, so far back as on the 26th of June, Mr. Hastings had made "a very unusual tender," as he calls it; that is, to defray with his own money the extraordinary expense of sending against the Mahrattas the detachment under Major Camac. He also at the same time gives them to understand that the money, which he had thus expended, was not his own. But, without a word to show to whom, in that case, the money did belong, he only adds, "With this brief apology I shall dismiss the subject." His language is somewhat strange. This account of this transaction he

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calls an "anecdote."—"Something of affinity," he says, "to this anecdote may appear in the first aspect of another transaction." Of that transaction too the same letter contains an account. When Bengal was threatened with the detachment of the Berar army, which during the war with the Mahrattas marched into Cuttack, one of the means which Mr. Hastings employed for eluding the danger was, to supply that detachment with money. He now informs the Court of Directors, that he took upon himself the responsibility of sending three lacs of rupees, unknown to his Council. Two-thirds of this sum, he says, *he had raised by his own credit;* and should charge as a debt due to himself by the Company: the other third he had supplied from the cash in his hands belonging to the Company.

About these several sums, this was all the information which the Governor-General thought fit to give to the Directors on the 29th of November, 1780.

On the 5th of January, 1781, the following notice was communicated by the Governor-General to the Members of the Council, "Honourable Sir, and Sirs, Having had occasion to disburse the sum of three lacs of sicca rupees, on account of secret services, which having been advanced *from my own private cash*, I request that the same may be repaid to me," &c.; and on the 9th he received three bonds for the amount.

Of the whole sum it was proved that one-third was paid to Mr. Hastings in England.

The next document was a letter from Mr. Hastings to the Secret Committee of the Court of Directors,

dated Patna, 20th January, 1782, stating, that he had, when at Chunar, accepted from the Nabob Vizir, a present of ten lacs of rupees, which he requested their permission to appropriate to himself.

Another of his letters to the same Committee, dated 22nd May, 1782, gave an account of the sums which he had privately received, and expended in the service of the Company. Excepting the sum from the Nabob Vizir, no information was yet given of the sources whence any part of that money had been derived. Of the use which was made of the several sums, he says, that the reference which he gives to the several accounts, in which they are credited in the Company's books, is specification enough. With regard to the sources whence they were derived, the motives for receiving them, and his own modes of dealing with them, he satisfies himself with the following mysterious and obscure expressions. "Why these sums were taken by me; why they were, except the second" (that applied to the service of Camac's detachment) "quietly transferred to the Company's use; why bonds were taken for the first," (that sent to the Berar army in Cuttack), "and not for the rest, might, were this matter to be exposed to the view of the public, furnish a variety of conjectures, to which it would be of little use to reply. Were your Honourable Court to question me upon these points, I would answer, that the sums were taken for the Company's benefit, at times in which the Company very much needed them; that I either chose to conceal the first receipts from public curiosity by receiving bonds for the amount, or possibly acted without any studied design which my memory

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could at this distance of time verify: and that I did not think it worth my care to observe the same means with the rest."

The managers proved; that in the letter of the 29th of November, 1780, two-thirds of the money sent to the Berar army were stated as the money of the Governor-General himself: that in this of the 22nd of May, 1782, the whole is stated as the money of the Company. It may, however, be also observed, that the taking of the bonds, instead of being a transaction to keep the matter secret, was the only thing which could make it public. He received the money from a private source; he gave it to the Berar Raja privately, and told him the gift was a secret; all this might have been hid from the world for ever, except for the bonds.

Another thing which is very remarkable is, the idea, which the Governor-General seems to have formed, of the strange negligence of the Court of Directors toward the proceedings of their servants; when he could present to them such an account, as this, of such transactions, without expecting their most severe displeasure. Great sums of money, received from secret sources, and instead of any account of such extraordinary and suspicious transactions given to them, to whom the fullest account of every transaction was due, a declaration that this was not a matter for public view, and that it would furnish a variety of conjectures if known, make up one of the strangest scenes between a master and servant, that the history of public negligence presents for the instruction of mankind.

The negligence, which the Governor-General here

imputes to himself, the crime of acting in such affairs with so disgraceful a measure of inattention, that he himself knew not the motive by which he was guided, ought alone, if true, to have condemned him in the minds of vigilant employers, and proved his total inaptitude for the trust which was placed in his hands; if not true, conclusions are suggested of a different sort.

The above-mentioned account of the appropriation to the service of the Company of certain sums privately received, though dated on the 22nd of May, 1782, was not sent from Calcutta on the 16th of December. By this time, Mr. Hastings had received accounts of the inquiries instituted, and even the resolutions passed, with respect to his conduct, by the House of Commons in England. To escape the appearance of having been impelled to produce this account by the terror of investigation, he got Mr. Larkins, the Accountant-General, to affix to it his affidavit of the time in which it was written. In his letter of this date he reproaches his employers for rendering necessary, by their want of confidence, this humiliating precaution. Addressing the Secret Committee of the Court of Directors, he says, "If I wanted integrity and honour, the Court of Directors have afforded me but too powerful incentives to suppress the information which I now convey to them through you, and to appropriate to my own use the sums which I have already passed to their credit—by the unworthy, and, pardon me if I add, dangerous reflections which they have passed upon me for the first communication of this kind. And your own experience will suggest to you that there are persons

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who would profit by such a warning." He adds, with regard to the sums in question, and the declaration is important, "I could have concealed them, had I had a wrong motive, from yours and the public eye, for ever." He makes in the same letter another declaration, which is worthy of a man conscious of rectitude; "if I appear in any unfavourable light by these transactions, I resign the common, and legal, security of those who commit crimes or errors. I am ready to answer every particular question, that may be put against myself, upon honour, or upon oath."

There he laid his finger on the material point. There he appealed to an efficient test. Innocence is proved by interrogation, and best proved when the interrogation is most severe. Had Mr. Hastings acted up to this declaration; had he really submitted himself to scrutiny; instead of using, to defend himself from it, every effort which the artifice of lawyers could invent, and every subterfuge which the imperfections of the law could afford, he might have left his rectitude, if real, without a suspicion; whereas now, if his accusers could not prove his guilt, it is still more certain that he has not proved his innocence[1].

[1] If it had been the fortune of Hastings to have had his conduct investigated by wise, just, and dispassionate judges, he would, no doubt, have established his personal integrity and rectitude of intention, although it might have appeared that in his anxiety to provide for critical emergencies, he had not always been sufficiently scrupulous in obtaining the necessary means, nor sufficiently careful in preparing precise statements of their amount, origin, and appropriation. The investigation, however, was not instituted to ascertain truth, but to fix criminality upon him. Talents the most popular, and passions the most ungoverned, were let loose against him; and no reasonable man can believe, that if he had stood alone in his defence, his innocence would have shielded him from the combined assault of

Mr. Hastings, to prove that he never meant to appropriate the money for which he took the bonds, stated in his defence, delivered at the bar of the House of Commons, that a few months after the receipt of the bonds, that is in July, 1781, he indorsed all three payable to the Company, and left them in the hand of the Accountant-General, with express directions to deliver them up. The managers gave evidence to prove that they were not indorsed till the 29th of May, 1782; and not communicated to the Board and cancelled, till the 17th of January, 1785.

The managers next gave in evidence a letter of Mr. Hastings to the Court of Directors, dated the 21st of February, 1784, in which he gave them an account of several sums, which had been expended in their service, but drawn from his own fortune, without having, as yet, been charged to their account. Some of the objects of this expenditure were of the most excellent kind, as the digest and translation of the native laws. Having stated these debts, amounting to a sum of not less than 34,000*l.* sterling, Mr. Hastings added, that he meant to pay himself by a sum of money which had privately come into his hands. Of the source from whence this money was derived, he afforded, as on former occasions of the sort, no information to his employers whatsoever. He left them absolutely and unceremoniously in the dark.

The managers next presented a passage from Mr.

Fox, Sheridan, and Burke. His only chance of justice lay in opposing like to like, and in his friend Scott, and his counsel Law, he was fortunate enough to find courage and ability equal to the conflict.—W.

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Hastings's defence, delivered at the bar of the House of Commons, in which the mode of receiving this money is declared in the following words. "In the year 1783, when I was actually in want of a sum of money for my private expenses, owing to the Company not having at that time sufficient cash in their treasury to pay my salary, I borrowed three lacs of rupees of Raja Nobkissen, an inhabitant of Calcutta, whom I desired to call upon me, with a bond properly filled up—he did so; but, at the same time I was going to execute it, he entreated, I would rather accept the money than execute the bond: I neither accepted the offer nor refused it; and my determination upon it remained suspended between the alternative of keeping the money as a loan to be repaid, and of taking it and applying it, as I had done other sums, to the Company's use; and there the matter rested till I undertook my journey to Lucknow, when I determined to accept the money for the Company's use. And these were my motives: Having made disbursements from my own cash, which I had hitherto omitted to enter into my public accounts, I resolved to reimburse myself, in a mode most suitable to the situation of the Company's affairs, by charging these disbursements in my Durbar accounts of the present year, and crediting them by a sum privately received, which was this of Nobkissen's."

A letter was then read, from the Court of Directors to the Governor-General and Council at Fort William, dated 16th March, 1784, in which they require an account (none had as yet been given) of the presents which the Governor-General had con-

fessed. "Although it is not," they say, "our intention to express any doubt of the integrity of our Governor-General, on the contrary, after having received the presents, we cannot avoid expressing our approbation of his conduct, in bringing them to the credit of the Company: yet, we must confess, the statement of these transactions appears to us in many parts so unintelligible, that we feel ourselves under the necessity of calling on the Governor-General for an explanation, agreeable to his promise, voluntarily made to us. We therefore desire to be informed—of the different periods when each sum was received—and what were the Governor-General's motives for withholding the several receipts from the knowledge of the Council—or of the Court of Directors—and what were his reasons for taking bonds for part of these sums—and for paying other sums into the treasury as deposits on his own account."

Mr. Hastings was at Lucknow when this letter was received. He returned to Calcutta on the 5th of November, 1784; and departed for England in the month of February, 1785. During all this time no answer was returned. When in England, he was given to understand that an explanation was still required; and he addressed a letter to the Chairman, dated Cheltenham, 11th July, 1785. He first apologizes, for delay, by his absence from Calcutta, and the pressure of business at the close of his government. He can give no further account, he says, of dates, than he has given, though possibly Mr. Larkins could give more. The necessities of the government, he says, were at that time so great, that "he eagerly seized every allowable means of relief;" but partly

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thought it unnecessary to record these secret aids, partly thought it might be ostentatious, partly that it would excite the jealousy of his colleagues. He made the sums be carried directly to the treasury, and allowed them not to pass through his own hands, to avoid the suspicion of receiving presents for his own use. Two of the sums were entered as loans. One was entered as a deposit, namely, that expended on Camac's detachment, because the transaction did not require concealment, having been already avowed. He makes a curious declaration, that though destined for the public service, and never meant for his own use, "it certainly was his original design to conceal the receipt of all the sums, except that one, even from the knowledge of the Court of Directors." This relates to all the sums, except that from the Nabob Vizir. With respect to that he says, "When fortune threw in my way a sum, of a magnitude which could not be concealed, and the peculiar delicacy of my situation, at the time in which I received it, made me more circumspect of appearances, I chose to apprize my employers of it, and to add to the account all the former appropriations of the same kind."

In this, if something, be it what it may, be alleged, as a motive for concealment from the Council, nothing whatsoever is even hinted at as a motive for concealment from the Court of Directors. This, the principal question, was still completely evaded, and left without a shadow of an answer. One of the allegations is altogether unintelligible, that it would have excited suspicion had the sums been carried to his own house, but no suspicion when, as his money,

not the Company's, it was lodged in their treasury either as a deposit or a loan. If the money was represented as his, the question, how he came by it, was the same in either case. With respect to these most suspicious transactions, two important points of information were still obstinately withheld; namely, from what parties the sums were obtained, and why the transactions were concealed from those from whom it was a crime in their servants, of the deepest dye, to conceal any thing which affected the trust committed to their charge.

On the 18th of July, 1785, a week after the date of his letter from Cheltenham, Mr. Hastings wrote to Mr. Larkins, still in India; to send to the Court of Directors, an account of the dates of the sums which he had privately received. The letter of Mr. Larkins, sent in compliance with this request of Mr. Hastings, was now produced by the managers. In this letter, beside the dates, four of the sources of receipt were incidentally mentioned; namely, Cheyte Sing, and the renters of Bahar, Nuddea, and Dinagepore.

From this, the managers proceeded to a different head of evidence; namely, the changes which Mr. Hastings had introduced in the mode of collecting the revenues. The object was to show that these changes increased the facilities of peculation, and laid open a wide door for the corrupt receipt of money; that such facilities had not been neglected; and that money had been corruptly received. The great points to which the managers attached their inferences of guilt were three; the appointment of the Aumeens, with inquisitorial powers for the

purpose of the inquiry into the taxable means of the country, at the termination of the five years' settlement in 1777; the abolition of the Provincial Councils and appointment of the Committee of Revenue; and the receipt of presents from the farmers of the revenue in Nuddea, Dinagepore, and Bahar.

The managers began with the Provincial Councils. It was proved by a variety of documents, that the Provincial Councils had received the strongest approbation of the Court of Directors. It was proved that they had repeatedly received the strongest testimonies of approbation from Mr. Hastings himself. Yet, on the 9th of February, 1781, Mr. Hastings abolished them; and formed his Committee of Revenue.

It was next proved, that Gunga Govind Sing was appointed Dewan to this Committee; and that high and important powers were attached to his office.

To prove that the character of Gunga Govind Sing was bad, a consultation of the Council in 1775 was read. On that occasion he was, for a fraud, dismissed from his office of Naib Dewan to the Provincial Council of Calcutta; Mr. Francis and Mr. Monson declaring that from general information they held him to be a man of infamous character; the Governor-General asserting that he had many enemies, and not one advocate, but that all this was general calumny, no specific crime being laid to his charge. Lastly, the managers offered evidence to prove that Gunga Govind Sing, at the time of this appointment, was a public defaulter, by a large balance, of which he would render no account.

They now passed from the abolition of the Provincial Councils, to the present from the revenue farmer of Patna. In the sixth article of charge, Mr. Hastings was accused of having taken from a native, of the name of Kelleram, as a consideration for letting to him certain lands in Bahar, a sum of money amounting to four lacs of rupees. It was inferred that this was a corrupt appointment, as well from other circumstances, as from this: That Kelleram was notoriously a person of infamous character, and, in all other respects, unqualified for the office.

The managers proposed to begin with the proof of this unfitness. The Counsel for the defendant objected; because unfitness was not a charge in the impeachment. After hearing both parties, the Lords adjourned. Finally, they resolved, "That the managers for the Commons be not admitted to give evidence of the unfitness of Kelleram for the appointment of being a renter of certain lands in the province of Bahar; the fact of such unfitness not being charged in the impeachment."

The point is of importance. It is only when conformable to reason, that the authority of lords, or of any one else, is the proper object of respect.

Whether the appointment of a particular man to a particular office was corrupt, or not corrupt, was the question to be tried. If circumstantial evidence is good in any case, it is good in this. But surely, it will not be denied, that the fitness or unfitness of the person to the office, is one among the circumstances from which the goodness or badness of the

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motives which led to his appointment may be inferred. Accordingly, the counsel for the defendant did not deny that the unfitness of Kelleram was proper to be made an article of circumstantial evidence. Not denying that it would be just matter of evidence, if given, they insisted that it should not be given.

Their objection amounted to this, that to prove one fact of delinquency, no other fact importing delinquency shall be given in evidence, unless the evidentiary fact itself is charged as delinquency in the instrument of accusation. Now such is the nature of many crimes, that other crimes are the most common and probable source of circumstantial evidence. At the same time, it may be very inconvenient, or even impossible, to include all these minor crimes in the instrument of accusation appropriated to the principal crime. They may not all be known, till a great part of the evidence has been heard and scrutinized. The tendency of such a rule cannot be mistaken. It adds to the difficulties of proving crimes; it furnishes another instrument, and, as far as it operates, a powerful instrument, for giving protection and impunity to guilt. The objection, that a man cannot be prepared to defend himself against an accusation which has not been preferred, is futile; because the fact is not adduced as the fact for which the man is to be punished, but a fact to prove another fact. Besides, if on this, or any other incident of the trial, he could show cause for receiving time to adduce evidence, or in any other way to prepare himself, for any fresh matter

which might arise on the trial, a good system of judicature would provide the best mode of receiving it.

Mr. Burke took the liberty of making remarks. He said the Commons of England had a right to demand that they should not be held to technical niceties. And he complained of the obstruction, which this resolution of the Court would create, in dragging to light the offences of the accused, or even in ascertaining the measure of the crime. "If the managers were to be debarred," he said, "from giving evidence of corrupt intentions, and of aggravations arising from circumstances, *not specifically stated in the charges*, it would be impossible for their Lordships to determine the amount of the fine, which ought to be imposed upon the prisoner, if he should be convicted; and their Lordships must, in the end, be embarrassed by their own decision."

The managers then gave in evidence, that, in July 1780, Mr. Hastings wrote an order to the chief of the Patna Council, to *permit* Kelleram to go to Calcutta: that it was debated in the Council, whether, "in his present situation," he ought to be permitted to go in consequence of the Governor-General's orders: that two out of five members voted against the permission: that Kelleram, on receiving permission, requested a guard of Sepoys for his protection down to Calcutta, which was granted: that proposals were received by Mr. Hastings from Cullian Sing for renting the province of Bahar: that the proposals were accepted: and that Kelleram was appointed deputy, or naib.

The managers for the Commons stated, that they

BOOK VI CHAP. 2. 1790. would next give evidence to show that this bargain had been extremely injurious to the interests of the Company, as Kelleram had not made good his engagements.

The Counsel for the defendant objected to this evidence, and a long debate ensued. They took the same ground as before, that this would be evidence to a crime not specified in the charge. The Lords adjourned, and spent the rest of the day in deliberation. On the next day of the trial, the managers were informed, "That it was not competent for them to give evidence, upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands, mentioned in the said sixth article of charge, to Kelleram, fell into arrear and was deficient." Yet why should a fact, which was offered only as a matter of evidence, be rejected as evidence because it was not offered also as matter of charge? This was to confound the most important distinctions. Assuredly, if the corruption of a bargain can be proved by circumstances, its evil consequences, if such as might easily have been, or could not but be, foreseen, is one of those circumstances, and an important one. This, said the Lords and the lawyers, must not be adduced.

The managers vehemently renewed their complaint, that the resolutions of their Lordships were unaccompanied by the reasons on which they were founded. The judges of other courts, it was said, pursued a different course. The evil consequence on which they principally rested their complaint was, the ignorance in which a decision without a reason left them of what would be decided in other cases.

The managers next gave in evidence, that a rule, with regard to peshcush, or the gratuity offered by a renter upon the renewing of his lease, had been established in 1775; and that a small sum, merely to preserve an old formality, was accurately prescribed, and made permanent. The great sum, taken by Mr. Hastings from Kelleram, was not, therefore, peshcush. Mr. Young, who had been six years a member of the Provincial Council of Patna, said that the lease stood in the name of Cullian Sing; but Kelleram was considered as a partner. Being asked, Whether, if the lands had been let at their full value, it would have been for the interest of Kelleram to give four lacs of rupees as a gratuity upon the bargain, he replied, "I think, in the circumstances in which Kelleram stood, he could not afford it." He was asked, "In what circumstances did he stand?" The opposing lawyers objected; upon the old ground, that the unfitness of Kelleram was not matter of charge. True, and not proposed to be made. But it was matter of evidence, and, as such, ought to have been received. The managers waved the question.

The same witness proved, that at the time when this bargain was struck between Mr. Hastings and Kelleram, a contract had actually been concluded for the whole province by the Provincial Council, who had let the lands, in the usual proportions, to the Zemindars of the country, and other renters. This legal transaction was therefore violated by the bargain subsequently struck between Mr. Hastings and Kelleram. Within the knowledge of the wit-

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1790. It was given in evidence that Cullian Sing was Dewan of the province; that it was the duty of the Dewan to check the collectors, and prevent the oppression of the ryots; that of course this check was annihilated by making the Dewan renter; but it was also stated, that Cullian Sing had never, in fact, exercised any of the powers of Dewan, being prevented by the Provincial Council as unfit.

The witness was asked, "Whether the withdrawing the Provincial Council, and abolishing the office of Dewan, did not put it in the power of the farmer to commit oppression with greater ease than before?" His answer was, "Doubtless." He was asked "What impressions the letting of the lands to Kelleram and Cullian Sing made upon the minds of the inhabitants of the country?" Mr. Young answered, "They heard it with terror and dismay." After the answer was given, Mr. Law objected to the question; it not being within the competence of the witness to speak of any body's sentiments but his own. To give in evidence the sense of the country was on the other hand affirmed to be an established practice. The Lords returned to their own house. They put a question to the judges. The judges requested time to answer it. And further proceedings on the trial were adjourned for two days. When the court resumed, the managers were informed, "That it was not competent for them to put the following question to the witness on the sixth article of the charge;— What impression the letting of the lands to Kelleram

and Cullian Sing made upon the minds of the inhabitants in the province of Bahar." Yet it will not be denied, that when a man was set over a country with powers to which those of a despot in Europe are but trifling, the impression on the minds of the people might rise to such a height as to be a circumstance of great importance, and indispensably necessary to be taken into the account, in forming a correct and complete conception of the views of him by whom the appointment was made. To refuse to receive such evidence is, therefore, to refuse the means of forming a complete and correct conception of that on which the most important judicial decisions may turn.

The witness was asked, what effects arose from the appointment of Kelleram? and how he conducted himself as renter of the province? Neither of these questions was allowed.

After this the managers went back to the abolition of the Provincial Councils and the Committee of Revenue. Mr. Young deposed, that Gunga Govind Sing, who was appointed Dewan; that is, under the new system, the great executive officer of revenue; was a man of infamous character, in the opinion both of Europeans and natives; that the Board of Revenue was in his opinion an institution which gave a new degree of power to the Governor-General; that under that system, mischief could more easily exist and be concealed, than under that of the Provincial Councils; that the people were more open to the oppression of the Dewan. When the question was asked, whether it came within his knowledge that

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more evil, or less evil, existed under the Committee of Revenue, than under the Provincial Councils, the right of exclusion was urged afresh. Acts of oppression could not be given, because oppression was not charged in the articles. Be it so; but corruption was charged, and acts of oppression were offered as proof of it. Nor is there any contempt of rationality so great as to deny, that acts of oppression may afford evidence, in proof of corruption. To exclude that evidence, by rule, is to deprive justice of one of the means of disclosing guilt. The managers maintained, that oppression was in reality matter of charge, by the words, "to the great oppression and injury of the said people." The lawyers contended, that this, like the words, "contrary to the peace of our Lord the King," was but an inference of law. The managers insisted that the cases were radically different, because an act of murder, felony, treason, was, by its nature, and necessarily, contrary to the King's peace; the appointment of a Board of Revenue was not by necessity, oppression. The oppression was not matter of inference, but matter of proof. The Lords adjourned to deliberate, and consumed in the chamber of parliament the rest of the day. The managers were at last informed, "That it was not competent for them to put the following question to the witness upon the seventh article of charge, viz., Whether more oppressions did actually exist under the new institution than under the old."

The managers then reverted to the bargain of Mr. Hastings with Cullian Sing, and Kelleram. The purport of the questions was to prove that a rumour, a prevalent belief, of the receipt, as a gratuity or

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present, of a sum of four lacs of rupees, by Mr. Hastings, existed, previous to the time at which he made confession of it to his employers. Many of the questions of the managers were resisted by the Counsel for the defendant, but such questions were put by some of the Peers as elicited proof that the rumour did precede the confession.

By cross-examination it was shown, that the abolition of the Provincial Councils was injurious to the interests of the witness; that Gunga Govind Sing, to whose reputed character he spoke, lived at Calcutta, while he himself resided principally at Patna; that one of the individuals from whom he had heard a bad character of Gunga Govind Sing was his enemy; but that his bad character was a subject of common conversation.

In the course of this examination it came out, though the Counsel for the defendant objected to it as evidence, that Kelleram at the time of his bargain with Mr. Hastings, was a bankrupt and a prisoner.

Mr. David Anderson was examined, the President of the Committee of Revenue, and a man selected by Mr. Hastings for the most important employments. It appeared that his office, as President of the Committee, was almost a sinecure, for excepting about three months, he was always absent on other employments. He, too, was acquainted with the rumour about the money received from Kelleram, which made him so uneasy about the reputation of Mr. Hastings, that he conversed with him upon the subject, and was told that the money had been accounted for. He understood, that sums were pri-

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vately received from persons employed in the revenue, which never were entered in the public accounts. He himself was sworn not to receive money privately. The Dewan of the Committee of Revenue might extort money unduly from the people, without detection, provided the offence was not very general. The question was put, and a most important question it was: "Whether, after all, the Committee, with the best intention, and with the best ability, and steadiest application, might not, to a certain degree, be tools in the hands of the Dewan." The question was objected to, and given up.

On his cross-examination, he affirmed that Gunga Govind Sing had not a bad character, he thought he had in general a good character. To show that three lacs of the money privately received were sent to the Berar army, two questions were put, to which the managers objected, with as little to justify their objections, as those of their opponents, and more to condemn them, because contrary to the principles to which they were calling for obedience on the opposite side.

The managers added the following pertinent questions: "Whether during the whole of the year 1780, there was any such distress in the Company's affairs as to put them to difficulty in raising three lacs of rupees?—I do not believe there was.—Whether after the year 1781, the Company did not borrow several millions?—They borrowed very large sums; I cannot say what."

This was intended to meet the allegation of Mr. Hastings, that the extreme exigence of the Company's affairs had led him to the suspicious resource

of taking clandestine sums of money from the subjects and dependants of the state.

After some further evidence, bearing upon the same points, and exciting objections of the same tendency, on which therefore it is unnecessary to dwell, the managers proceeded to the questions connected with the province of Dinagepore, whence one of the secret sums had been derived.

In order to show the opinion of Mr. Hastings himself, that great enormities might be committed under the Committee of Revenue, and yet be concealed, they read the passage from his minute of the 21st of January, 1785, in which he says, "I so well know the character and abilities of Raja Deby Sing, that I can easily conceive it was in his power both to commit the enormities which are laid to his charge, and to conceal the grounds of them from Mr. Goodlad," the collector, and Company's chief officer in the district. The managers said, they would next proceed to show the enormities themselves.[1]

But the Counsel for the defendant objected, on the ground they had so often successfully taken, that these enormities were not matters of charge. To this, as before, the simple answer is, that corruption was the matter of charge; and that the enormities of a man placed in a situation to do mischief might be a necessary and important article in the proof that corruption placed him there. To reject it was, therefore, to reject that without which it might be that justice could not be faithfully administered; without which it might be that misconception would

[1] It is worthy of remark, that by this time Burke knew that the authority on which these enormities were asserted, had been retracted. See p. 110. See also Hastings's Defence at the end of the next note.—W.

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be created in the mind of the judge; and hence misdecision, wrong in place of right, become the ultimate and unavoidable result.

The managers again contended that oppression *was* a matter of charge; that Mr. Hastings well knew it must flow from the system which he pursued; and that the honour of the Court, and the character of the British nation, were at stake, when the question was, whether enormities, such as no tongue could describe, should be thought worthy of investigation, or be for ever screened from it by lawyers' ceremonies. The Counsel for the defendant answered this appeal to honour and feeling, by challenging the managers to make these enormities an article of impeachment, and boasting their readiness to meet such a charge. But this was a mere evasion. Why meet those enormities only as matter of impeachment, refuse to meet them as matter of evidence? They had the same advantages in the one case as in the other. They might equally display the weakness, if any existed, in the evidence brought to support the allegations; they might equally bring counter-evidence, if any existed, to disprove them. As far therefore as the challenge had any effect, it was an effect contrary to the interests of justice.[1]

[1] The whole of this scene, as given by the historian of the Trial, is curious, and forms an important incident in the History of Mr. Hastings.

"Mr. Burke said, that he must submit to their Lordships' decision, but he must say, at the same time, that he had heard it with the deepest concern: for if ever there was a case in which the honour, the justice, and the character of a country were concerned, it was in that which related to the horrid cruelties and savage barbarities exercised by Deby Sing, under an authority derived from the British Government, upon the poor forlorn inhabitants of Dinagepore; cruelties and barbarities so frightfully and transcendently enormous and savage, that the bare mention of them had filled with horror every description of people in the country.

To meet the allegation of Mr. Hastings, that he took one present, because money was not in the

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"The impression that even the feeble representation which his slender abilities had been able to produce had made upon the hearts and feelings of all who had heard him, was not to be removed but by the evidence that should prove the whole a fabrication.—The horror which the detail of those cruelties had produced in the minds of all classes of people was indescribable; the most dignified ladies of England had shuddered, and some had fainted at the bare recital; and was no evidence now to be received to prove the existence of those acts of barbarity which had shocked the whole nation?

"Mr. Law said, it was not to be borne, that the Right Hon. Manager should thus proceed to argue in reprobation of their Lordships' judgments solemnly given.

"Mr. Burke said, nothing could be further from his intention than to reprobate any decision coming from a Court for which he entertained the highest respect. But he was not a little surprised to find, that the learned Counsel should stand forth the champion for their Lordships' honour;—they were themselves the best guardians of their own honour: and it never could be the intention of the Commons to sully, much less to call in question, the honour of the House of Peers. As their *co-ordinate* estate in the Legislature, the Commons were perhaps not less interested than their Lordships themselves in the preservation of the honour of that noble House; and therefore he never could think of arguing in *reprobation* of any of its decisions.

"But the truth was, that the decision upon which he was then speaking was not upon a question put by the Commons: the Lords had no doubt decided properly; but it was certainly upon their own question, and not upon that of the Commons. If the Commons had been suffered to draw up their question themselves, they would have worded it in a very different manner, and called for the judgment of the House upon a question very differently stated from that on which the decision had just been given.

"It was true that the cruelties charged in the article were not stated, *eo nomine*, to have been exercised by Deby Sing; but the article charged Mr. Hastings with having established a system which he knew *would* be, and in point of fact *had* actually been, attended with *cruelty* and *oppression*.—The article did not state by whom the acts of cruelty had been committed, but it stated cruelty in general; and of such cruelty, so charged, the managers had a right to give evidence.

"He observed, that their Lordships must perceive a difference in the case thus stated, from that which they had stated themselves, and on which they had decided. He begged, therefore, that they would consider seriously what effect this decision would have upon this part of the article and upon the general character of the country.

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treasury to pay his salary, accounts were produced which showed that it was six months in arrear in

"If they were entirely to shut out all evidence of those acts of cruelty, what would the world say? what would be the opinion of mankind? It would astonish the surrounding nations, that the door should be shut upon the proof of cruelties, the bare recital of which had harrowed up the souls of all who had heard it. The character of the nation would suffer, the honour of their Lordships would be affected, if, when the Commons of England stood ready to prove the existence of barbarities that had disgraced the British name, and called for vengeance on the guilty heads of those who were in any degree instrumental in them, they should be stopped, and told that no evidence could be received in proof of those barbarities. A Noble Lord, deservedly high in the opinion of his Peers, had said, when he heard those savage cruelties detailed, that, compared with the *enormity* of them, all the articles of the impeachment weighed not a feather; that if the detail was founded in truth, no punishment could be too severe for whoever should be found to have had any part in exercising them.

"The same Noble Lord, Mr. Burke observed, had said, that if the Hon. Manager did not make good this most horrid of all charges, he ought to pass for the most daring calumniator.

"Upon that issue, said Mr. Burke, I am ready to put my character: suffer me to go into the proofs of those unparalleled barbarities; and if I do not establish them to the full conviction of this House and of all mankind, if I do not prove their immediate and direct relation to, and connexion with the system established by Mr. Hastings, then let me be branded as the boldest calumniator that ever dared to fix upon unspotted innocence the imputation of guilt."

"Earl Stanhope called Mr. Burke to order. His Lordship said, that the *time* of the House must not be wasted in arguments upon questions on which their Lordships had already decided."

"Mr. Burke said, that it was his object to save the HONOUR and the CHARACTER of their Lordships, and not their TIME: and it could not have entered his head, that whilst he was pursuing so great an object, he could be supposed to be wasting their TIME, which, though certainly precious, could not weigh a feather against their HONOUR and CHARACTER.

"However, let that be as it might, he had done: he had endeavoured to rescue the character and justice of his country from obloquy; if those who had formerly provoked inquiry, if those who had said that the savage barbarities which he had detailed had no other existence than that which they derived from the malicious fertility of his imagination, if those who had said that he was bound to make good what he had charged, and that he would deserve the most opprobrious names if he did not afford Mr. Hastings an opportunity of doing away the impression which every part of the nation had received from the picture of the savage cruelties exercised by Deby Sing; if, he repeated, they now shrunk from the

August, 1782; that it was four months in arrear in September of that year; that it continued between

inquiry for which they had before so loudly called, if they now called upon their Lordships to reject, and not listen to the proofs which they before had challenged him to bring, the fault was not with him; he had done his duty to his country, whose honour and justice had been outraged; to the House of Commons, who had sent him to their Lordships' bar to express their abhorrence of cruelties, and to point the vengeance of the law against those who had been instrumental in practising them; and he had done what he owed to himself, in offering to prove all that he had advanced on the subject, on pain of being branded, if he should fail in his proofs, as a bold and infamous calumniator.—'Upon the heads of others therefore (said he), and not upon those of the Commons of Great Britain, let the charge fall, that the justice of the country was not to have its victim. The Commons have shown their readiness to make good their charges.—But the defendant shrinks from the proof, and insists that your Lordships ought not to receive it.'

"Mr. Law, with unexampled warmth, whether real, or assumed in consequence of instructions in his brief, we cannot pretend to say, replied to Mr. Burke. He said that the Right Hon. Manager felt bold, only because he knew the proof which he wanted to give *could* not be received; that, from the manner in which the charge was worded, their Lordships *could not*, if they *would*, admit them, without violating the clearest rules and principles of law. 'But (said he) let the Commons put the detail of those shocking cruelties into the shape of a charge which my client can meet, let them present them in that shape at your Lordships' bar, and then we will be ready to hear every proof that can be adduced. And if, when they have done that, the Gentleman for whom I am now speaking does not falsify every act of cruelty that the Honourable Managers shall attempt to prove upon him, MAY THE HAND OF THIS HOUSE AND THE HAND OF GOD LIGHT UPON HIM!'

"After this ejaculation, delivered in a tone of voice not unlike that of the theatric hero, when he exclaims, 'Richard is hoarse with calling thee to battle!'—this part of the business ended." History of the Trial of Warren Hastings, Esq., part iii. p. 54—56.

Beside what Mr. Burke had thus declared, Mr. Fox, in the speech in which he summed up the evidence on this article, said, "The Counsel for the defendant had, upon this subject, invoked the judgment of their Lordships, and the vengeance of Almighty God, not on their own heads, but on the head of their client, if the enormities of Deby Sing, as stated by his Right Hon. Friend, should be proved and brought home to him. He knew not how the defendant might relish his part in this imprecation which the Counsel had made; but in answer to it, if the time should come when they were fairly permitted to come to the proof of those enormities, he would, in his turn, invoke the most rigorous justice of the

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four and five months in arrear till December; and that it was eight months in arrear on the following April, when it was completely paid up.

Noble Lords, and the full vengeance of Almighty God, not on the head of his Right Hon. Friend, but on his own, if he did not prove these enormities and bring them home to the defendant, in the way which his Right Hon. Friend had charged them upon him; and this he pledged himself to do, under an imprecation on himself, as solemn as the Counsel had invoked on their client." As these passages, and the passages from the introductory speech of Mr. Burke, have been presented to the reader, it is fair that he should also receive what Mr. Hastings said in his defence.

"I will not detain your Lordships by adverting, for any length, to the story told by the manager who opened the general charges relative to the horrid cruelties practised on the natives of Dhee Jumla by Deby Sing.—It will be sufficient to say, that the manager never ventured to introduce this story in the form of a charge, though pressed and urged to do so, in the strongest possible terms, both in and out of Parliament.—Mr. Paterson, on whose authority he relied for the truth of his assertions, and with whom, he said, he wished to go down to posterity, has had the generosity to write to my attorney in Calcutta, for my information, 'That he felt the sincerest concern to find his reports turned to my disadvantage, as I acted as might be expected from a man of humanity throughout all the transactions in which Deby Sing was concerned.'—Had the cruelties which the manager stated been really inflicted, it was not possible, as he very well knew at the time, to impute them, even by any kind of forced construction, to me.—My Lords, it is a fact that I was the first person to give Mr. Paterson an ill opinion of Deby Sing, whose conduct upon former occasions had left an unfavourable, and perhaps an unjust, impression upon my mind. In employing Deby Sing I certainly yielded up my opinion to Mr. Anderson and Mr. Shore, who had better opportunities of knowing him than I could have. In the course of the inquiry into his conduct he received neither favour nor countenance from me, nor from any Member of the Board. That inquiry was carried on principally when I was at Lucknow, and was *not* completed during my government, though it was commenced and continued with every possible solemnity, and with the sincerest desire, on my part, and on the part of my colleagues, to do strict and impartial justice. The result I have read in England; and it certainly appears that though the man was not entirely innocent, the extent of his guilt bore no sort of proportion to the magnitude of charges against him. In particular, it is proved that the most horrible of those *horrible* acts, so artfully detailed, and with such effect, in this place, *never were committed at all.*

"Here I leave the subject, convinced that every one of your Lordships must feel for the unparalleled injustice that was done to me by

The managers next proposed, that a letter of the Governor-General should be read, to prove that the plan which he himself had represented to the Court of Directors, as best, namely, to let the lands, especially the larger districts, to the ancient Zemindars, had been violated by himself, and violated by a preference given to persons not only of another description, but persons in the highest degree worthless and exceptionable. Mr. Law was again ready with his objections. The disconformity of the conduct of Mr. Hastings with his opinions was not in charge. On this occasion Mr. Burke made his celebrated declarations; First, That the efficiency of Impeachment was indispensable to give practical utility to the principles of the English constitution; the machinery of which without this particular spring would remain totally insufficient for the purposes of good government: Secondly, That the technical rules of pleading and evidence, set up by the lawyers, were, if sanctioned by the Lords, most completely sufficient to destroy the useful efficacy of impeachment. The Lords did sanction and confirm (Mr. Burke confessed and bewailed the fact) the technical rules of the lawyers. He was therefore bound by consistency to this important conclusion; That the English constitution remains but a delusive name; and affords no security for good government.[1]

the introduction and propagation *of that atrocious calumny.*" How far these allegations of a man in his own favour, who would not allow them to be submitted to proof, are entitled to weigh, is the question which remains.

[1] The words of Mr. Burke, as reported by the historian of the trial, are as follow: "At the revolution, the people had taken no other security for that preservation, and for the pure and impartial administration of justice,

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The Lords retired to their chamber to deliberate; and, on their return, which was not till the succeeding day of the trial, announced, that it was not competent for the managers to produce the evidence proposed.

To show that the offices of Farmer of the revenue, and the Dewan, the latter of which was intended to be a check upon the former, were never united in one person, except in two of the instances in which Mr. Hastings received money, the following extract of a letter from Mr. Shore, President of the Committee of Revenue, to the Governor-General and Council, dated 2nd of November, 1784, was read: "Raja Deby Sing was Farmer, Security, and the Dewan of Rungpore. The union of the two former offices in the same person requires no explanation, since the practice is very general, and is founded upon solid and obvious reasons. The investiture in the office of the Dewan, during the period in which he held the farm, is less common, but not without precedent; for Raja Cullian Sing stood precisely in

than the responsibility of ministers and judges to the High Court of Parliament. An impeachment by the Commons was the mode of bringing them to justice, if the former should attempt any thing against the constitution, or the latter should corruptly lend themselves to measures calculated to set aside the government by law, or should attempt to pollute the source of public justice.

"If in the pursuit of such criminals the Commons, who could have nothing in view but substantial justice, were to be stopped at every step by objections drawn from technical rules and forms of pleading, then would the greatest and most dangerous criminals escape the vengeance of offended justice; parliamentary impeachments, which were the principal, if not the only security for the preservation of the constitution, would become nugatory and vain; and the most corrupt ministers might, without check or control, pursue the most anti-constitutional career, unawed by responsibility, or an impeachment from which they could have nothing to fear." History, ut supra, part iii. p. 58.

the same predicament with regard to the province of Behar."

The managers next adduced evidence, with respect to an offer made by the Vizir in the month of February, 1782, of a second present of ten lacs of rupees to Mr. Hastings. Mr. Hastings declined acceptance of the present, on his own account; and communicated the circumstance to the Council, who used endeavours to obtain the money for the Company.

Evidence was next adduced to prove that Mr. Hastings had remitted, through the East India Company, since his first elevation to the head of the government in Bengal, property in his own name to the amount of 238,757*l*.

Mr. Shore being examined whether Gunga Govind Sing was a fit person to be the Dewan, or principal executive officer of revenue, declared that, in his opinion, no native ought to have been employed in that situation. To the character of the natives, in general, he ascribed the highest degree of corruption and depravity.

Mr. Fox summed up the evidence, thus adduced on the sixth and on part of the seventh and fourteenth articles of impeachment, on the 7th and 9th of June, 1790, the sixty-eighth and sixty-ninth days of the trial. The Lords then adjourned to their chamber, and agreed to postpone the trial to the first Tuesday in the next session of parliament.[1]

Some incidents, which, during these proceedings,

[1] On this head of the proceedings, have been followed the printed Minutes of Evidence, ut supra, p. 1103—1301, and the Hist. of the Trial, ut supra. part iii.

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took place in the House of Commons, it is requisite briefly to mention. On the 11th of May, in conformity with a previous notice, Mr. Burke, after a speech in which he criticized severely the petitions of Mr. Hastings, who had bewailed the hardships of the trial, and complained of delays, though he himself, he affirmed, was the grand cause of delay, and appeared to have contrived the plan of making his escape by procrastination, moved two resolutions: First, that the House would authorize the managers to insist upon such alone of the articles as should appear to them most conducive in the present case to the satisfaction of justice: Secondly, that the House was bound to persevere till a judgment was obtained upon the articles of principal importance. The minister supported the first of the motions, but the other, as unnecessary, he thought the manager ought not to press. Mr. Fox laid the cause of delay upon the obstructions to the receipt of evidence, particularly the want of publicity in the deliberations upon the questions of evidence in the House of Lords; because every decision, unaccompanied with reasons, was confined to a solitary case; and all other cases were left as uncertain and undecided as before. Some days after these proceedings, appeared, in one of the newspapers, a letter, signed by Major Scott, containing a short review of the trial, and animadverting with great severity upon the managers; treating it as no better than a crime, and indeed a crime of the deepest dye, to have prosecuted so meritorious an individual as Mr. Hastings at all; but a still greater enormity not long ago to have closed all proceedings against him. Of this publication complaint was made in the

House of Commons. The author, as a member of the House, was heard in his defence. The letter was treated as a libel on the managers, and a violation of the privileges of the House. The minister admitted the truth of these allegations; but urged, with great propriety, That the House had exceedingly relaxed its practice, in restraining the publication either of its proceedings, or censures bestowed upon them; that the common practice of the House formed a sort of rule, a rule to which every man had a right to look, and which he had a right to expect should not be violated in his particular case: that under a law, formed by custom, or fallen partially into desuetude, no individual instance ought to be selected for punishment if it was not more heinous than those which were commonly overlooked; and, on these principles, that the present offence, though it might require some punishment, required, at any rate, a very gentle application of that disagreeable remedy. The managers were more inclined for severity. Mr. Burke made an important declaration: "That he was not afraid of the liberty of the press; neither was he afraid of its licentiousness; but he avowed that he was afraid of its venality." He then made an extraordinary averment, that 20,000*l.* had been expended in the publication of what he called, "Mr. Hastings's libels." It was finally agreed, that the offender should be reprimanded by the speaker in his place.

Before the time appointed by the House of Lords for resuming the business of the trial, the parliament was dissolved. This gave birth to a question, whether a new parliament could proceed with the

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impeachment; and whether a proceeding of that description did not abate or expire with the parliament which gave it birth. The new parliament assembed on the 25th of November, 1790; and on the 30th, the subject was started by Mr. Burke, who exhibited reasons for proceeding with the trial, but intimated his suspicion that a design was entertained in the House of Lords to make the incident of a new parliament a pretext for abating the impeachment. On the 9th of December, a motion was brought forward, that on that day se'ennight the House should resolve itself into a committee to take into consideration the state in which the impeachment of Warren Hastings, Esq. was left at the dissolution of the last parliament. In opposition to this motion it was proposed, that the House should determine a more limited question, whether or not it would go on with the impeachment. Mr. Pitt was of opinion, that it was not fit to wave a question respecting an important privilege of the House, when that privilege was called in question. The original motion was therefore carried. On the day appointed for the Committee, the motion that the Speaker do leave the chair was opposed by allegations of the excellence of the conduct of Mr. Hastings, and the hardships to which he had been exposed, by the length of the trial, and the asperity of the managers. Mr. Pitt said, the question to which these arguments applied was the question whether it was proper in the House to go on with the impeachment. He wished another question to be previously, and solemnly decided, whether it had a *right* to go on with it. Mr. Burke said, that gentlemen seemed afraid of a difference

with the House of Lords. For his part, "he did not court—fools only would court, such a contest. But they who feared to assert their rights, would lose their rights. They who gave up their right for fear of having it resisted, would by and by have no right left." The motion was carried after a long debate. On the 22nd, the business was resumed, on the question, whether the trial of Warren Hastings was pending or not. The debate lasted for two days. The minister, and by his side Mr. Dundas, joined with the managers in maintaining the uninterrupted existence of the trial. Almost all the lawyers in the House, Mr. Erskine among them, contended vehemently that the dissolution of parliament abated the impeachment. This brought forth some strictures upon the profession, which formed the most remarkable feature of the debate. Mr. Burke said, that "he had attentively listened to every thing that had been advanced for and against the question; and he owned he was astonished to find, that the lawyers had not brought a single particle of instruction with them for the use of those that were laymen. One learned gentleman had given the solution, by confessing that he was not at *home* in that House. The same might be said of most of his brethren. They were birds of a different class, and only perched on that House, in their flight towards another. Here they rested their tender pinions, still fluttering to be gone, with coronets before their eyes. They were like the Irishman, who, because he was only a passenger in the ship, cared not how soon she foundered." Mr. Grant said, the great zeal for *Parliamentary Law*, and *Constitutional Law*, always forced into his

mind the adage, *latet anguis in herba*. They were wide grasping phrases, admirably calculated to promote, without confessing, a design of acting agreeably to arbitrary will. Mr. Fox was very pointed in his strictures on the professors of the law. "If to their knowledge of the law," he said, "the lawyers were to add some regard to the constitution, it would be no great harm. He saw the high necessity of impeachments, not so much to check ministers, as to check the courts of justice. Suppose our judges were like some of those in the reign of Charles the Second. Where was our remedy, if not in impeachment? If that great instrument of safety was made inefficient, we should have no law, no justice, not even a *scintilla* of liberty. He reprobated the gentlemen of the long robe for having, as it were, conspired to oppose the motion. When he saw a corps of professional people, a knot of lawyers, a band of men, all animated with *l'esprit du corps,* setting themselves against the liberty of the subject, and the best means of supporting the constitution, he should say it was worse than the Popish plot in Charles the Second's time, if any Popish plot did then exist." Mr. Burke said, "he wished the country to be governed by law, but not by lawyers." The motion was finally carried by a great majority.

The business was not resumed till the 14th of February 1791, when it was moved by Mr. Burke, that the House should proceed with the impeachment. In a long speech he endeavoured to obviate the prejudices which were now generally disseminated, as if the measure was operating upon the defendant with cruelty and oppression. "It had

been argued," he said, "that the trial had lasted a long time, and that the very length of it was a sufficient reason why it should cease; but if protraction was admitted as a substantial reason for putting an end to a penal investigation, he who committed the greatest crimes would be surest of an acquittal; and mankind would be delivered over to the oppression of their governors; provinces to their plunder, and treasuries to their disposal."—"False compassion aimed a stroke at every moral virtue." He affirmed that the managers were chargeable with none of the delay. Though the quantity of the matter was unexampled, a small number of days had been employed in hearing the speeches they made, or the evidence which they tendered. For all the rest any body in the world was responsible rather than they. He then displayed the great and numerous difficulties which had been thrown in the way of the prosecution: and asked if the House "had forgotten, there was such a thing as the *Indian interest;* which had penetrated into every department of the constitution, and was felt from the Needles, at the Isle of Wight, to John o'Grot's House!" He then complained of the extraordinary obstructions raised "by certain professors of the law, whose confined and narrow mode of thinking, added to their prejudices, made them enemies to all impeachments, as an encroachment on the regular line of practice in the courts below." Yet, notwithstanding the importance of these considerations, that he might comply with the spirit of the times, he should propose, that the managers proceed no further than to one other article; that on contracts, pensions, and allowances;

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which, as Mr. Hastings had defended the acceptance of presents, by alleging the pecuniary wants of the Company, and as the proof of this article would show that where poverty was pretended, profusion had prevailed, was an article, necessary to complete the proof of the offences, which were charged under the previous head of accusation. After a long debate, in which nothing of particular moment occurred, the several motions for proceeding in the impeachment, so limited and reduced, were put and carried.

When the intention of the Commons to proceed with the impeachment was announced to the Lords, a committee was formed to search the journals for precedents. The question was at last debated on the 20th of May. The only circumstance of much importance, in the debate, was one of the arguments employed by the Lord Chancellor to prove that impeachments abated by the dissolution of parliament. They abated he said, because one of the parties to the prosecution, namely, the Commons, became extinct. If it were alleged that the whole people of England were the real prosecutors, as the acts of the Lower House of Parliament were the acts of the people, he had two things to reply. The first was, that the acts of the House of Commons could not be regarded as the acts of the people of England; because the House of Commons did not *actually* represent the people of England; it represented them no more than virtually. The next thing was, that their Lordships' House of Parliament knew nothing about the people, as an acting body in the state; they knew only the House of Commons, the acts of which, he had shown, were not the acts of the people.

The people, therefore, were not parties to an impeachment. Lord Loughborough attempted to answer this argument; but, as he produced nothing which refuted the assertion, that the House of Commons did not represent the people of England, did not, in any such sense represent them, as could allow it with truth to be said that the acts of that House were the acts of the people; so he said nothing which bore with any force upon the point, till he came to allege that the people had the power of insurrection. "Let not their Lordships," he said, "act incautiously with regard to the popular part of the constitution! Let them look about them, and be warned! Let them not deny that the people were *any thing;* lest they should compel them to think that they were *every thing.*"

On the unfitness of the constitution to produce good government, unless impeachment existed in a state of real efficiency, Lord Loughborough followed Mr. Fox and Mr. Burke. Without this, "it would be impossible to get at a bad minister, let his misdemeanours and crimes be ever so enormous: Our much-boasted constitution would lose one of its best securities; and ministerial *responsibility* would become merely nominal." In other words, it would have no existence; we should have, instead of it, an impostrous pretence. Mr. Burke, however, and Mr. Fox asserted; and no one who understands the facts can honestly dispute; that the mischievous rules of evidence and procedure set up by the lawyers, and sanctioned by the Lords, make impeachment effectual, not for the punishment of the guilty, but their escape. That the constitution of England is inade-

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quate to the purposes of good government; as no improvement in that respect has since taken place; is, therefore, the recorded opinion of three at least of the most eminent men of the last generation. After a long debate, it was finally agreed, that the impeachment was depending; and that on the 23rd the House would resume proceedings in Westminster Hall.

The Lords having taken their places, and the usual preliminaries performed, Mr. St. John was heard to open the fourth article of the impeachment; that in which was charged the crime of creating influence, or of forming dependants, by the corrupt use of public money.

Under this head of the trial, the material incidents are few.

The topic of influence was of a more extensive application, than the question relating to Mr. Hastings, or than all the questions relating to India taken together. On this subject, to which the most important question respecting the actual state of the British constitution immediately belongs, Mr. St. John laid down the following doctrines: "That all the checks of the constitution, against the abuse of power, would be weak and inefficient, if rulers might erect prodigality and corruption into a system for the sake of *influence:* That public security was founded on public virtue, on morals, and on the love of liberty: That a system which tended to set public virtue to sale, to pluck up morals by the roots, and to extinguish the flame of liberty in the bosoms of men, could not be suffered to escape punishment, without imminent peril to the public weal." Whether

Mr. Hastings was guilty or not guilty of creating that influence, remained to be proved: That it tends more than almost any other crime to deprive the people of England of the benefits of good government, it is impossible not to perceive.

As soon as the opening speech was concluded, Mr. Hastings rose. As the length of his address is moderate, and as it affords a specimen of the manner in which Mr. Hastings demeaned himself to the Lords, its insertion will be repaid by the instruction which it yields.

"My Lords,

"I shall take up but a very few minutes of your time; but what I have to say, I hope, will be deemed of sufficient importance to justify me in requesting that you will give me so much attention. A charge of having wasted 584,000*l.* is easily made, where no means are allowed for answering it. It is not pleasant for me, from week to week, from month to month, from year to year, to hear myself accused of crimes, many of them of the most atrocious dye, and all represented in the most shocking colours, and to feel that I never shall be allowed to answer them. In my time of life—in the life of a man already approaching very near to its close, four years of which his reputation is to be traduced and branded to the world, is too much. I never expect to be allowed to come to my defence, nor to hear your Lordships' judgment on my trial. I have long been convinced of it, nor has the late resolution of the House of Commons, which I expected to have heard announced to your Lordships here, afforded me the least glimpse of hope, that the termination of my

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trial is at all the nearer. My Lords, it is now four years complete since I first appeared at your Lordships' bar; nor is this all; I came to your bar with a mind sore from another inquisition, in another place, which commenced, if I may be allowed to date it from the impression of my mind, on the day I arrived in this capital, on my return to England after thirteen years' service. On that day was announced the determination of the House of Commons, for arraigning me for the whole of my conduct; I have been now accused for six years; I now approach very near (I do not know whether my recollection fails me) to sixty years of age, and can I waste my life in sitting here from time to time arraigned, not only arraigned, but tortured with invectives of the most virulent kind? I appeal to every man's feelings, whether I have not borne many things, that many even of your Lordships could not have borne, and with a patience that nothing but my own innocence could have enabled me to show. As the House of Commons have declared their resolution, that for the sake of speedy justice (I think that was the term) they had ordered their managers to close their proceedings on the article which has now been opened to your Lordships, and to abandon the rest, I now see a prospect which I never saw before, but which it is in your Lordships' power alone to realize, of closing this disagreeable situation, in which I have been so long placed; and however I may be charged with the error of imprudence, I am sure I shall not be deemed guilty of disrespect to your Lordships in the request which I make; that request is, that your Lordships

will be pleased to grant me that justice which every man, in every country in the world, free or otherwise, has a right to; that where he is accused he may defend himself, and may have the judgment of the court on the accusations that are brought against him. I therefore do pray your Lordships, notwithstanding the time of the year (I feel the weight of that reflection on my mind), but I pray your Lordships to consider not the unimportance of the object before you, but the magnitude of the precedent which every man in this country may bring home to his own feelings, of a criminal trial suspended over his head for ever; for in the history of the jurisprudence of this country, I am told (and I have taken some pains to search, and, as far as my search has gone, it has been verified) there never yet was an instance of a criminal trial that lasted four months, except mine, nor even one month, excepting one instance, an instance drawn from a time and situation of this government, which I hope will be prevented from ever happening again. My Lords, the request I have to make to your Lordships is, that you will be pleased to continue the session of this court till the proceedings shall be closed, I shall be heard in my defence, and your Lordships shall have proceeded to judgment. My Lords, it is not an acquittal that I desire; that will rest with your Lordships, and with your own internal conviction. I desire a defence, and I desire a judgment, be that judgment what it will. My Lords, I have bowed, I have humbled myself before this court, and I have been reproached for it. I am not ashamed to bow before an authority to which I owe submission, and

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for which I feel respect that excites it as a willing oblation from me. I now again, with all humility, present myself a subject of your justice and humanity. I am not a man of apathy, nor are my powers of endurance equal to the tardy and indefinite operation of parliamentary justice. I feel it as a very cruel lot imposed on me, to be tried by one generation, and, if I live so long, to expect judgment from another; for, my Lords, are all the Lords present before whom I originally was tried? Are not many gone to that place to which we must all go? I am told that there is a difference of more than sixty in the identity of the judges before whom I now stand. My Lords, I pray you to free me from this prosecution, by continuing this trial till its close, and pronouncing a judgment during this session; if your Lordships can do it, I have a petition to that effect in my hand, which, if it is not irregular, I now wish to deliver to your Lordships."

There was exquisite adaptation, either with or without design, in the conduct of Mr. Hastings, to the circumstances in which he was placed. The tone of submission, not to say prostration, which he adopted towards the Court, was admirably suited to the feelings of those of whom it was composed. The pathetic complaints of hardship, of oppression, of delay, of obloquy, began when the tide of popular favour began to be turned successfully against the agents of the prosecution; and they increased in energy and frequency, in proportion as odium towards the managers, and favour towards himself, became the predominant feeling in the upper ranks of the community.

This odium, and this favour, are not the least remarkable among the circumstances which this impeachment holds up to our view. During the trial, what had the managers done to merit the one; what had Mr. Hastings done, to merit the other?[1] Convinced, for it would be absurd to suppose they were not convinced, that they had brought a great criminal to the judgment seat, they had persevered with great labour to establish the proof of his guilt. Mr. Hastings had suffered a great expense; and at that time, it could not be known that he had suffered any thing more than expense. The necessity of labour and

[1] There were abundant reasons why the sentiments of the people should have undergone a change. The managers, after long declamatory harangues, which had "harrowed up the souls" of a tender-hearted public, had proved—nothing. It was impossible that the people should not feel some resentment at the fraud thus practised upon their sympathies. Then so many instances of undignified violence had been exhibited by Burke in particular, the prime mover of the whole—both in Parliament, and in Westminster Hall, that it was generally felt there was more of personal vindictiveness in his proceedings against Hastings, than a patriotic or philosophical vindication of the principles of good government. The undeniable hardship, inflicted upon Hastings by the state of anxiety in which he was so long kept, and the expense he was compelled to incur, were other claims upon the indulgence of the nation. It is argued in the text, that of these two the expense alone was certain; as if equal certainty does not attach to the anxiety. It was not a question of mere labour and attendance; guilty or innocent, anxiety is the necessary condition of every person accused of crime: the guilty man has much more cause to fear conviction than to hope for escape, and the innocent man has cause to apprehend that in the passions of his adversaries, the misconceptions of interested persons, and the fallibility of human judgment, his innocence may not be his safety. From anxiety, the prosecutors of Hastings were comparatively free—it mattered little to them what might be the result. Their expenses were paid by the nation. The contrast of their position, with that of Hastings, could not fail to strike the most unobservant, especially when it had been continued for a protracted period—and naturally awoke sentiments of compassion for one exposed to so unequal a contest. Sympathy with him, necessarily begot disfavour for his opponents, and time has justified popular feeling.—W.

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attendance was common to him with his accusers. As for suspense, where a man is guilty, the feeling connected with it may be a feeling not of pain but of pleasure; a feeling of hope that he may escape. To a man who is sure to be condemned, delay may be a benefit. The innocent man alone is he to whom it is necessarily injurious: and the innocence of Mr. Hastings was not yet decreed.

Of the causes of the odium incurred by the managers, and the favour acquired by the defendant, I am unable to render a perfect account. There is much of secret history connected with it, which it is not possible to establish, on evidence which history can trust. This much may be said, for it rests on public grounds: The managers brought a great deal of rhetoric, with papers and witnesses, to the trial; and seemed unhappily to think that rhetoric, papers, and witnesses were enough: They brought not much knowledge of those grand pervading principles which constitute the moral and rational standard of all that ought to be law, and on which they might have grounded themselves steadfastly and immoveably in defiance of the lawyers: And they brought little dexterity; so that the lawyers were able to baffle, and insult, and triumph over them, at almost every turn. After the prosecution was rendered unpopular, the intemperance of the tone and language of Mr. Burke operated strongly as a cause of odium; yet it is remarkable, that when that same intemperance was speedily after carried to greater excess, and exerted in a favourite direction, that is, against the reformers in France, it became, with the very same class of persons, an object of the highest admiration

and love.[1] The favour with which the cause of Mr. Hastings was known to be viewed in the highest family in the kingdom, could not be without a powerful effect on a powerful class. The frequency with which decisions and speeches, favourable to him, were made in the House of Lords; the defence which he received from the great body of the lawyers; the conversation of a multitude of gentlemen from India, who mixed with every part of society;[2] the uncommon industry and skill with which a great number of persons, who openly professed themselves the agents or friends of Mr. Hastings, worked, through the press, and other channels, upon the public mind; and, not least, the disfavour which is borne to the exposure of the offences of men in high situations, in the bosom of that powerful class of society which furnishes the men by whom these situations are commonly filled; all these circumstances, united to others which are less known, succeeded, at last, in making it a kind of fashion, to take part with Mr. Hastings, and to rail against the accusers.

In the present speech of Mr. Hastings, and the petition which it echoed, it surely was, on his part, an extraordinary subject of complaint, that, between

[1] The intemperate vehemence of Burke does not constitute his claim in this instance to love or admiration; but his intemperance when he thought the whole frame of society in danger, was much more venial than when it aimed to crush an individual. Had, however, Burke's views of the French revolution been characterized by no prudent patriotism, no prophetic foresight, they would not have been entitled to admiration, merely as specimens of impetuous eloquence.—W.

[2] This is one of the strongest proofs that could have been adduced of Hastings's merits. Had he been the corrupt, base, cruel, tyrannical monster that Burke depictured him, "the conversation of a multitude of gentlemen from India," would have been of all things least likely to clear his reputation.—W.

BOOK VI CHAP. 2. 1791. the delivery of the accusations, and the delivery of his defence, a long period had intervened: When the managers had from the beginning most earnestly contended that, immediately, after each of the accusations, he should make his defence upon each; and he himself had insisted, and victoriously insisted, that he should not.

Of the delay, one part was owing to the nature of the charges and the nature of the evidence; the one comprehensive, the other voluminous. This was inseparable from the nature of the cause. The rest, a most disgraceful portion, was owing to the bad constitution of the tribunal, and its bad rules of procedure; causes of which Mr. Hastings was very careful not to insinuate a complaint. The whole odium of the accusation fell, as it was intended to fall, upon the managers, to whom, unless guilty of delay, which was never alleged, in bringing forward the evidence, not a particle of blame under this head belonged.

When Mr. Hastings desired to represent the hardship as unparalleled in his native country of remaining under trial during four years; he was very little informed of the dreadful imperfections of the law of that country, and of the time which any poor man, that is the far greater number of men, is liable to remain, not in the enjoyment of freedom and every comfort which wealth can bestow: but in the most loathsome dungeons, without bread sufficient to eat, or raiment to put on, before trial begins, and after acquittal is pronounced. In that last and most cruel state of human suffering, there was at that time no limit to the number of years, during which, without

guilt, or imputation of guilt, a man (as a debtor) might remain.[1]

To prove that Mr. Hastings had created *influence,* to ensure to himself by the misapplication of the public money a corrupt support, five instances were adduced: a contract of opium, granted to Mr. Sulivan; an illegal traffic in opium, for the alleged purpose of remitting money of creatures and dependants; undue allowances granted to Sir Eyre Coote; a contract for bullocks; and two contracts for grain. The two cases to which the greatest suspicion attaches are the opium contract; and the money given to Sir Eyre Coote.

With regard to the contract, the facts are shortly these. Mr. Sulivan was the son of the Chairman of the Court of Directors: He was a very young man, with little experience in any of the affairs of India, and no experience in the business of opium at all: The Court of Directors ordained, that all contracts should be for one year only, and open to competition: The opium contract was given to Mr. Sulivan without competition, by private bargain, and not for one year only, but four: Mr. Sulivan possessed the office of Judge Advocate; he was further appointed Secretary to Mr. Hastings, and attended him on his journey to the Upper Provinces: He could not therefore attend to the business of the contract, and he sold it: He sold it to Mr. Benn for a sum of about 40,000*l.*: Mr. Benn sold it to Mr. Young for 60,000*l.*: And Mr. Young confessed that he made from it an ample profit. From these facts the managers in-

[1] The defective condition of the law in regard to others, was no alleviation of the hardship which Hastings himself suffered.—W.

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ferred, that the contract was given at an unfair price to Mr. Sulivan, for enabling the son of the Chairman to make a fortune, and Mr. Hastings to ensure the father's support. "It was melancholy," they said, "to see the first Officer of the Company at home, and their first Officer abroad, thus combining in a system of corruption, and sharing the plunder between them."

The facts adduced on the other side were; that the rule of forming the opium contract for one year, and openly, had long been dispensed with, and for good reasons, with the consent of Mr. Francis himself; that a more favourable bargain was not granted to Mr. Sulivan than to his predecessor; and that Mr. Benn and Mr. Young owed their profits to their own peculiar knowledge of the business.

The question however is not yet answered, why it was given to a man, who it was known could not keep it; and who could desire it only for the purpose of selling it again with a profit; when it might have been sold to the best purchaser at once.

In the case of Sir Eyre Coote, the following were the facts: "That 16,000*l.* per annum was the pay allowed him by the Company, and ordered to stand in lieu of all other emoluments: that it was of great importance to the Governor-General to obtain his support in the Council, of the votes of which he would then possess a majority: that shortly after his arrival, a proposition, introduced by himself, and supported by the Governor-General, was voted in the Council, for granting to him, over and above the pay to which he was restricted by the Court of Directors, a sum exceeding 18,000*l.* per annum,

under the name of expenses in the field: that the General began immediately to draw this allowance, though in a time of peace, under the pretence of visiting the stations of the army: that the burden was speedily shifted from the shoulders of the Company, to those of the Nabob Vizir, by the General's arrival to visit the stations of the army in Oude: that the face put upon the matter was, to charge the payment of the allowances upon the Vizir, only while the General was in the territory; but that in fact they never were taken off so long as the General lived: that the Court of Directors condemned these allowances: but this condemnation was disregarded, and the allowances paid as before.

The facts operating in favour of Mr. Hastings were; that General Stibbert, when acting as Commander-in-chief only for a time, had, partly by the orders of the Court of Directors, partly by the liberality of the Governor-General in Council, received an allowance of about 12,000*l.* for his expenses in the field: that Sir Eyre Coote represented an allowance equal to that received by General Stibbert, as absolutely necessary to save him from loss, when subject to the expenses of the field: that, notwithstanding the treaty, expresssly confining the demands of the English government upon the Vizir to the expense of one battalion of troops, he did in fact pay for more, because more were by his consent employed in his country, the whole expense of which (and the field allowance to the General when at those stations of the troops were stated as part of that expense) he was called upon to defray.

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Mr. Hastings further alleged, that this sum was paid with great cheerfulness by the Vizir, even after the General left the territory of Oude; that the General was soon after called to Madras to oppose Hyder Ali; that his death was evidently approaching; and that it would have been imprudent to make him throw up the service in disgust, by telling him that the Court of Directors condemned the allowance, when he alone could save the British interests in India from that destruction with which they were threatened by Hyder.

Upon the comparison of these facts, the following questions remain unanswered: why not postpone the allowance till the Directors were consulted? Why give the General 6,000*l.* per annum more than he asked? Why make the allowance to General Stibbert, whose pay was only 7500*l.* per annum, a rule for a man whose pay was 16,000*l.*, and who was expressly declared to have received that large amount in lieu of all other emoluments? It is further, in plain language to be declared (for this practice of governments cannot be too deeply stamped with infamy,) that it was hypocrisy, and hypocrisy in its most impudent garb, to hold up the consent of the Nabob, as a screen against condemnation and punishment: when it is amply proved that the Nabob had not a will of his own: but waited for the commands of the Governor-General, to know what, on any occasion that interested the Governor-General, he should *say* that he wished. When the Governor-General wished to lay upon the Vizir the expense of a greater portion of the Company's army, than was contracted for by treaty, what could he do?

He knew it was better for him to submit than to contest; and if so, it was evidently his interest to afford to the transaction any colour which the Governor-General might suggest, or which it was easy to see would best answer his purposes. Cheerfully paid by the Nabob! No doubt. We have seen the Nabob eager to make presents; presents of one sum, after another, of a hundred thousand pounds, to the great man on whom depended the favour he hoped, or the disfavour he dreaded; at the time when he was complaining that his family were unprovided with bread. At the very time when he is said to have cheerfully paid nearly two lacs of rupees per annum to Sir Eyre, he was writing to the Governor-General the most pathetic descriptions of the misery to which he was reduced by the exactions of the English government; and declaring that "the knife had now penetrated to the bone." But by what power was this eagerness to bribe the powerful servants of the Company produced? Could it be regarded, in any sense, as a voluntary act, the fruit of benevolence and friendship? Was it not extorted by what may truly be denominated the torture of his dependence; the terror of those evils which he contemplated in the displeasure of his masters? It is infamous to speak of presents from a man, in such a situation, as *free* gifts. No robbery is more truly coercion.

Again: the allegation that Sir Eyre Coote would have deserted his post, as a soldier, and abandoned his country in a moment of extreme exigency, upon a question of 18,000*l.* per annum; stamps with infamy, either the character of that General, if it

was truc, and it is not without appearances to support it; or that of Mr. Hastings, if it was false.

On the rest of the transactions, charged in this article as acts of delinquency, the explanations of Mr. Hastings left so fcw points for suspicion remaining, that, as the facts in themselves are not material to the history, the description of them would be of little advantage.

On the 30th of May, 1791, and the seventy-third day of the trial, Sir James St. Clair Erskine was heard to sum up the evidence upon the fourth article of impeachment. "Then the managers for the Commons informed the House, that, saving to themselves all their undoubted rights and privileges, the Commons were content to rest their charge here." Mr. Hastings made an humble address to the court, and alluding to his last petition which yet lay upon the table unconsidered, he implored that, if the prayer of that petition was not complied with, he might be allowed to appear, at least, one day at their Lordships' bar, before the end of the present session. The Lords adjourned, and sent a messagc to the Commons, from their own house, that they would sit again on the 2nd of June. The next day, in the House of Lords, a motion, grounded upon a letter of Mr. Hastings, requiring only fourteen days for the time of his defence, was made by one of the peers, for an address to the King that he would not prorogue the parliament, till the conclusion of the trial. The proposition of Mr. Hastings to confine his defence to any number of days, was treated by Lord Grenville as absurd. How could Mr. Hastings

know what questions would arise upon evidence, and how much time their Lordships might require to resolve them; business which had occupied the principal part of the time that had already been spent? How could he know what time the Commons might require for their evidence, and speeches in reply? How could he know what time their Lordships the Judges would require for deliberation on the evidence which they had heard? The motion was rejected.[1]

On the 2nd of June, the seventy-fourth day of the trial, Mr. Hastings read a written paper, containing his defence. As far as the matter of it was any thing in answer to the facts which have been charged as criminal, or tends to the demonstration of innocence, it has either been already adduced, when the fact or the charge was exhibited; or will hereafter be stated when the evidence is brought forward on which the allegation was grounded. One or two incidents it is instructive to mention.

Mr. Hastings declared, in the beginning of his paper; that if his judges would only then come to a decision, he would wave all defence. He risked nothing by this proposition; to which he well knew that the Lords would not consent. But he gained a great deal by the skill with which his declaration insinuated the hardship of delay.

It is observable that most of the ill-favoured acts of Mr. Hastings's administration, the extermination of the Rohillas, the expulsion of Cheyte Sing, the seizure of the lands and treasures of the Begums, and the ac-

[1] On this article of charge, see printed Minutes of Evidence, ut supra, p. 1303—1458; History of Trial, ut supra, part iv. p. 64—80.

ceptance of presents, were all for the acquisition of money. Though Mr. Hastings insisted, that all these acts were severally justifiable in themselves, without the plea of state necessity, yet state necessity, the urgent wants of the Company, are given, as the grand impelling motive which led to the adoption of every one of them. They are exhibited by Mr. Hastings, as acts which saved the Company, acts, without which, according to him, the Company must have perished.[1]

Towards the end of his defence, he rises to a most exulting strain:

"To the Commons of England, in whose name I am arraigned for *desolating the provinces of their dominion in India,* I dare to reply, that they are, and their representatives annually persist in telling them so, the most flourishing of all the States in India— It was I who made them so.

"The valour of others acquired, I enlarged, and gave shape and consistency to the dominion which you hold there; I preserved it; I sent forth its armies with an effectual, but economical hand through unknown and hostile regions, to the support of your other possessions; to the retrieval of one from degradation and dishonour: and of the other from utter loss and subjection. I maintained the wars which were your formation, or of that of

[1] He asserted, "The resources of India cannot, in time of war, meet the expenses of India." He denied that loans could be obtained: "I could not borrow to the utmost extent of my wants, during the late war, and tax posterity to pay the interest of my loans. The resources to be obtained by loans (those excepted for which bills upon the Company were granted,) failed early in my administration, and will fail much earlier in Lord Cornwallis's."

others *not of mine.* I won one member[1] of the great Indian Confederacy from it by an act of seasonable restitution; with another[2] I maintained a secret intercourse, and converted him into a friend: a third[3] I drew off by diversion and negotiation, and employed him as the instrument of peace—When you cried out for peace, and your cries were heard by those who were the object of it, I resisted this, and every other species of counteraction, by rising in my demands; and accomplished a peace, and I *hope everlasting* one, with one great state;[4] and I at least afforded the efficient means by which a peace, if not so durable, more seasonable at least, was accomplished with another.[5]

"I gave *you all,* and you have rewarded me with *confiscation, disgrace, and a life of impeachment.*"

The House having heard his address, adjourned to the chamber of parliament, where it was determined they should proceed with the impeachment on the first Tuesday in the next session of parliament.

On the 14th day of February, 1792, and the seventy-fifth day of the trial, the court was next assembled. Mr. Law, the leading counsel for Mr. Hastings, began to open the defence. The length of the trial, the toils of the Lords in sustaining the burden of judges, the sufferings of the prisoner under the evils of delay, of misrepresentation, of calumny, and insult, were now become favourite and successful topics, well remembered both by Mr. Hastings and

[1] The Nizam. [2] Moodajee Bonsla. [3] Madajee Sindia.
[4] The Mahrattas. [5] Tippoo Sultan.

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his counsel. A mischievous prejudice was hatched; that of all these evils, the prosecution itself was the cause; as if crimes of the nature of those imputed to Mr. Hastings, were crimes of which it is easy to establish the proof; as if the prosecution of such crimes, apt to be the most hurtful of all crimes, were an evil, not a good; as if those by whom that service is powerfully and faithfully rendered were among the enemies, not the greatest benefactors of mankind! Mr. Hastings, it may be said, committed no crimes. Be it so. Yet it will not be disputed that he committed acts which looked so much like crimes, that it was fit in the House of Commons to send them, as it did, to their trial; it was fit in the managers to adduce such evidence as they believed would make known the fact; to accompany that evidence with such observations as they thought best adapted to discover its application and force; and to resist such attempts as they conceived were made to prevent the exhibition and accurate appreciation of evidence, and hence the disclosure and conviction of guilt. Whatever time was necessary for this, was legitimately and meritoriously bestowed. It has not been attempted to be proved, that the managers consumed one instant of time that was not employed in these necessary functions. The number of hours so consumed was not great. Of all the rest, the court and the defendant were the cause; and upon the delay, which they themselves produced, they laboured to defame, or acted in such a manner as had the effect of defaming, the prosecution of all complicated offences; in other words, of creating impunity for the whole class of great and powerful offenders.

Though blame, and even ridicule, and insult, had

been bestowed upon the managers, for the length of their speeches, Mr. Law consumed three whole days with the speech in which he made the general opening of the defence. After he had finished, Mr. Plomer commenced on the first article of impeachment, the charge relating to Benares; and with his speech he occupied five days. It was not till the 1st of May, and the eighty-third day of the trial, that the defensive evidence began to be adduced. The mass of evidence given in defence was still greater than that presented by the managers. Appendix included, it occupies nearly twice as many pages as the printed minutes. Of this mass very little was new, excepting some parole evidence, chiefly intended to prove that there was disaffection, and preparations for rebellion, on the part of Cheyte Sing, before the arrival of Mr. Hastings at Benares. That evidence completely fails. That Mr. Hastings believed in nothing like rebellion, is evident from his conduct. Besides; would the proper punishment for rebellion have been a fine of fifty lacs?[1]

In making objections to evidence, the managers were only less active than Mr. Law. One thing may be said against them; and one thing for them. It was inconsistent in them to follow a course, which they had made a ground of complaint against their opponents. But as their opponents had seized the

[1] This is unfairly put, Hastings only talked of levying this fine, if not imposed. No overt act of rebellion had been committed, although disaffection was known to exist; and certainly there was no more effectual mode of preventing it from becoming dangerous, from being manifested at all, than a fine which should cripple the resources of the disaffected party. The fine was proposed as the punishment of disaffection, not of rebellion, as a preventive of rebellion, and after all it was only proposed, not levied.—W.

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benefit of a particular instrument, it would have been to place themselves, by their own act, in a state of inequality and disadvantage, had they refused to defend themselves by the same weapons with which they were assailed. There was no instance of exclusion which falls not under some of the heads, on which reflections have already been adduced.

Mr. Dallas, of Counsel for the defendant, was then heard to sum up the evidence on this head of the defence; and occupied the greatest part of three days with his speech. As soon as he had finished, the House adjourned to the chamber of parliament; and agreed to proceed in the trial on the first Tuesday in the next session of parliament.[1]

Though parliament re-assembled on the 13th of December, 1792, the House of Lords did not resume proceedings in trial till the 15th day of February, 1793. This was the ninety-sixth day of the trial. Mr. Law opened the defence, on the charge relative to the Begums of Oude, in a speech two days long, He began "with," says the historian of the trial, "a very affecting introduction; in which he stated that the situation of his oppressed client was such as, he believed, no human being, in a civilized nation, had ever before experienced; and which, he hoped, for the honour of human nature, no person would ever again experience." The moral was; that the prosecution which produced so much oppression was a wicked thing; that the managers, who were the authors of it, were the oppressors; and that the defendant, who bore the oppression, no mat-

[1] See, for this head of the trial, Minutes of Evidence, ut supra, p. 1465—1822; History of the Trial, part v.

ter for the allegations of his oppressors, deserved benevolence and support, not condemnation and punishment. In this lamentation, therefore, of the lawyer, the force of a multitude of fallacies, which his auditors, he knew, were well prepared to imbibe, was involved; and a variety of unjust and mischievous ideas, though not expressed, were effectually conveyed.

Of the evidence tendered, on the part of the defence, the result has already been fully adduced. During the delivery of it only one incident occurred, of which the importance would compensate description. On the third of the days allotted to the delivery and receipt of the evidence, on which day the managers had been minute and tedious in their cross examination, Mr. Hastings made another address to the Court. The benefit derived from his former attempts, and from the pathetic exordiums of the Counsel, encouraged repetition. "He said it was with pain, with anxiety, but with the utmost deference, that he claimed to be indulged in a most humble request that he had to make; which request was, that their Lordships would, in their great wisdom, put as speedy a termination to this severe and tedious trial, as the nature of the case would admit." His expense, and the loss of witnesses by delay, were the hardships of which, on this occasion, he principally complained. He took special care, however, to inform the Court, that though "it was known there had been great and notorious delays; in no moment of vexation or impatience, had he imputed those delays to their Lordships."[1] True,

[1] History of the Trial, ut supra, part vi. p. 42.

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indeed! That would have been a course, most inconsistent with his kind of wisdom. On the 25th of April, the evidence was closed; Mr. Plomer began to sum it up; and continued his speech on the 30th of April, and the 2nd and 6th of May, the next three days of the trial.[1]

On the 9th of May, which was the 111th day of the trial, Mr. Dallas began to open the defence on as much as had been insisted upon by the managers, of the sixth, seventh, and fourteenth articles of impeachment. His speech continued four days. On the second day of the speech, when the Lords returned to the chamber of parliament, another petition was presented to them from Mr. Hastings, urging again the hardship of his case, and presenting a most humble prayer for the termination of his trial during the present session of parliament. Not satisfied with this; as soon as Mr. Dallas had brought his opening speech to a close, Mr. Hastings made a short address to the Court, which he read from a paper. Describing his state of suspense as "become almost insupportable," he stated his resolution to abridge the matter of his defence, both on the above articles, and also the fourth, relating to influence, in such a manner, as to be able to deliver it in three days, that the managers for the Commons might have time to conclude their reply during the present session. With respect to a declaration, in this address, that, for eminent services to his country, he had been rewarded with injustice and ingratitude, Mr. Burke said, it was for the Lords to consider the

[1] Minutes, ut supra, p. 1823—2090; History, ut supra, part vi. p. 38—55.

propriety of such a speech, as applied by a culprit at their bar to the Commons of Great Britain; and he entered a caveat against the proposal of the defendant to deprive himself of any thing due to his defence; since he might thus be cunningly providing for himself a plea, that, had he not omitted his evidence, the proof of his innocence would have been rendered complete.

Of the evidence brought forward under those several heads, the only material point, which has not been already presented to view, is that relating to the remittances of the defendant. It appeared that 238,757*l.* had been remitted through the Company in the name of Mr. Hastings. Mr. Woodman, his attorney, swore, that the greater part of this was remitted for other persons; and that the sum remaining in his hands, as the property of Mr. Hastings, at the time of his return, was 72,463*l.*

A large mass of attestations of good behaviour, and of plauditory addresses from India, were presented. But these proved only one of two things; either that the prisoner deserved them; or that the authors of them were under an influence sufficient to produce them without his deservings. That the latter was the case, there can be no doubt; whatever the fact in regard to the former. Sir Elijah Impey said, in a letter from India produced to the House of Commons, "that addresses are procured in England through influence, in India through force." Viewing the matter more correctly, we may decide that there is a mixture of the force and the influence in both places. And Mr. Burke justly described the people of India, when he said; "The people themselves, on whose behalf

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the Commons of Great Britain take up this remedial and protecting prosecution, are naturally timid. Their spirits are broken by the arbitrary power usurped over them; and claimed by the delinquent, as his law. They are ready to flatter the power which they dread. They are apt to look for favour, by covering those vices in the predecessor, which they fear the successor may be disposed to imitate. They have reason to consider complaints, as means, not of redress, but of aggravation, to their sufferings. And when they shall ultimately hear, that the nature of the British laws and the rules of its tribunals are such, as by no care or study, either they or even the Commons of Great Britain, who take up their cause, can comprehend, but which, in effect and operation, leave them unprotected, and render those who oppress them secure in their spoils, they must think still worse of British justice, than of the arbitrary power of the Company's servants. They will be for ever, what for the greater part they have hitherto been, inclined to compromise with the corruption of the magistrates, as a screen against that violence from which the laws afford them no redress."[1]

When the evidence was closed, instead of sum-

[1] Report of the Committee, of the House of Commons (which Committee were the managers) appointed 5th March, 1794, to report on certain matters in the impeachment of Mr. Hastings.—M. There can be no doubt that Hastings was the most popular of all the Governors of Bengal with the natives of the country; his name is still held in fresher recollection and in higher esteem than that of any other. The addresses, although they might have been suggested by influential persons, expressed the honest sentiments of the people. The mention of force is absurd, and the influence, whatever it may have been, was strictly private. Lord Cornwallis was not a governor likely to exercise or permit any interference with native feeling or principle by authority.—W.

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ming it up by means of his Counsel, Mr. Hastings himself addressed the Court. The object was fourfold; First, to make, under an appeal to Heaven, a solemn asseveration, of having in no instance intentionally sacrificed his public trust to his private interest; Secondly, a similar asseveration, that Mr. Woodman received all the remittances which during the period of his administration he had made to Europe, and that at no time had his whole property ever amounted to more than 100,000*l.*; Thirdly, to make a strong representation of the great necessities of the state, for the relief of which he had availed himself of the irregular supplies for which he was accused; Fourthly, to charge the managers with a design to retard the decision on the trial till another year, and to entreat the Lords to resist them.

Mr. Burke and Mr. Fox thought it necessary to take notice of the great freedom with which the defendant was at last emboldened to speak of the managers for the Commons; to repel the charge of procrastination so confidently thrown upon them; and to challenge the proof that one single moment of unnecessary delay had been created by them.

The defence was finished on Tuesday the 28th of May, 1793. On the return of the Lords to the chamber of parliament, they agreed, after a long discussion, to adjourn further proceedings on the trial till Wednesday se'nnight. When this resolution was communicated to the Commons, Mr. Burke addressed himself to the House. He first contended, that, considering the mass of evidence which it was necessary to digest, the time was not sufficient to prepare the reply. He next animadverted, in a style of severity,

upon the appeals, made by Mr. Hastings to the House of Lords, and calculated to bring odium upon the House of Commons. A line of conduct had been pursued, which brought affronts upon the managers, the servants of the House. He said, that the managers had been calumniated.

In this, he alluded to an incident of rather an extraordinary nature. On the 25th of May, when Mr. Burke was cross-examining Mr. Auriol, and pushing the witness with some severity, and at considerable length, the Archbishop of York, who had already signalized his impatience during the cross-examinations performed by Mr. Burke, and whose son, Mr. Markham, had been in high employments under Mr. Hastings in India, "started up," says the historian of the trial, "with much feeling; and said it was impossible for him silently to listen to the illiberal conduct of the manager; That he examined the witness, as if he were examining, not a gentleman, but a pick-pocket: That the illiberality and the inhumanity of the managers, in the course of this long trial, could not be exceeded by Marat and Robespierre, had the conduct of the trial been committed to them." Mr. Burke, with great dignity and great presence of mind, replied, "I have not heard one word of what has been spoken, and I shall act as if I had not." Upon reading the printed minutes of the evidence with due care, I perceive that Mr. Burke treated the witness as an unwilling witness, which he evidently was; as a witness, who, though incapable of perjury, was yet desirous of keeping back whatever was unfavourable to Mr. Hastings, and from whom information unfavourable

to Mr. Hastings, if he possessed it, must be extorted by that sort of coercion which it is of the nature and to the very purpose of cross-examination to apply. Of the tones employed by Mr. Burke, the mere reader of the minutes cannot judge; but of the questions there set down, there is not one which approaches to indecorum, or makes one undue insinuation.[1] It was the right reverend prelate, therefore, who betrayed an intemperance of mind, which as ill accorded with the justice of the case, as with the decencies of either his judicial or his sacerdotal character.

Alluding to that outrage, Mr. Burke said, that an investigation into the conduct of the managers was indispensable; that to render investigation answerable to its end, the utmost possible publicity should be given; and that for this purpose he should move for a committee of the whole House, before which he undertook to prove, that the managers had neither protracted the trial by unnecessary delay, nor shortened it to the frustration of justice.

The Chancellor of the Exchequer preferred a select committee to inquire and report; as a committee of the whole House would retard the business of the country. In this proposal all parties finally acquiesced, and the committee was formed.

[1] This may be doubted: there is one question which insinuates that Mr. Auriol had falsely sworn to ignorance of a present or peshcush paid by the Raja; he had denied having heard of it. The question was repeated more than once; and at last it is thus put. "Then do you say, upon your oath, of any such peshcush privately paid from Dinagepore in 1779, 1780, or 1781, whether you have heard of any peshcush privately received by Mr. Hastings in those years?" It is easy to conceive this urged in an insulting manner.—W.

A discussion then took place, on a report of the words of the Archbishop, which had been published in one of the prints of the day. But, information being communicated that the prelate had just sustained a severe calamity in the loss of his daughter, the subject was dropped. Mr. Burke, with characteristic propriety, recommended to the House to overlook the offence of the dignified speaker, the real offender; but to prosecute the poor publisher, for a libel: Nobody attended to his wretched suggestion.

The next day, May the 29th, when the Lords were informed by a message from the Commons, that more time was required to prepare for the reply, they agreed to proceed with the trial on Monday se'nnight.

In the House of Commons, on the 30th, the report from the Committee was brought up; and a motion was made that a further day be desired to make the reply. A debate ensued; the House divided; and the motion was carried by a majority of more than two to one.

Mr. Burke then moved, " That the managers be required to prepare and lay before the House the state of the proceedings in the trial of Warren Hastings, Esq.; to relate the circumstances attending it, and to give their opinion, and make observations on the same, in explanation of those circumstances."

This motion was opposed by the friends of Mr. Hastings. " Mr. Burke," says the historian of the impeachment, " called loudly upon the justice of the House, either to dismiss him from their service as a

manager of this impeachment, or allow him to defend himself from the aspersions which had been thrown upon his character. Mr. Dundas thought it would be prudent in the Right Honourable Manager to withdraw his motion; though, if he persisted in it, he would give him his vote. He agreed perfectly with him, that the managers had great cause of complaint. But he trusted it would not be so in future. The motion might, in its consequences, lead to a misunderstanding, that would be fatal to the impeachment. Mr. Wyndham thought the managers had been so ill-treated, that the House ought not to lose a moment in asserting its dignity and privileges. It had been said, no insults, perhaps, would be offered in future. He hoped there would not. But the managers might be treated in such a way, that they might feel themselves hurt, while yet the House could not interfere. Mr. Pitt, moved by the reasons urged by Mr. Dundas, proposed that the previous question be admitted by the Right Honourable Manager; but said, that he was, notwithstanding, so well convinced of the truth of what he had asserted, that he would vote with him, if he refused to withdraw his motion." On a division of the House, the motion was lost by a majority of four.

On Wednesday, the 5th of June, in his place in the House of Commons, Mr. Grey, having affirmed the impossibility of being ready on Monday to reply to a mass of evidence which was not yet printed, and the further impossibility, at so late a period of the session, of going through with the remaining business of the trial, without compromising the claims of justice, said,

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"he should be ready in his place the next day, to move for a message to the Lords, to adjourn further proceedings in the trial till the next session of parliament, when the Commons would be ready to proceed day by day till final judgment should be given, if their Lordships thought fit."

Mr. Wigley, one of the gentlemen of the long robe, who had signalized his zeal in favour of the defendant, "opposed the motion," says the historian of the trial, "as prejudicial to the justice and character of the House; and which, if passed, would carry with it such a marked wish for delay, as would render impeachments detestable.

Mr. Dundas, as he spoke with more courage, so spoke to the point more correctly than any other man who spoke upon this occasion. "If he thought the motion could operate unjustly upon the defendant, he should be as ready," he said, "as any one to give it his negative; but sending the managers unprepared to reply, would be neither more nor less than a complete loss of the time so misapplied. Much had been said of delay. But to whom was that delay imputable? Not, in any degree, to that House, or to the managers; against whom such insinuations were neither just, nor generous, from those gentlemen who had negatived a proposition, made by the managers on a former day, for stating the whole facts on the trial, to exculpate themselves from every shadow of foundation for such a charge. He also observed, that the cry against delay had been uniformly raised at the close of a session. Why it was not made at an early period, when propositions might have been brought forward to expedite the proceeding, he left

the House to form their own opinion. If, however, there was any delay in the trial, it lay, he cared not who heard him, or where his declaration might be repeated, at the door of the House of Lords."

On a division, however, the motion was lost by a majority of 66 to 61. Mr. Burke immediately gave notice, that, in consequence of these extraordinary proceedings, he should next day submit a motion to the House, which he deemed absolutely necessary for their honour, dignity, and character. On that day, Friday, the 7th of June, Mr. Grey expressed his wish to the House, that they would accept of his resignation, as a manager. It was his duty to reply to the defence of Mr. Hastings, on the first article of the impeachment. But it was impossible for him to be ready on Monday. In this distress he applied to the House for instruction. After some conversation, a motion was made by Mr. Dundas, to apply once more to the Lords for delay. While this was debated, strangers were excluded. The motion was carried by a majority of 82 to 46.

On Monday, the 10th of June, a petition to the Lords was presented from Mr. Hastings, remonstrating against the application for delay. His language now waxed exceedingly strong. "He could not but regard the further adjournment required, as derogatory to those rights which belong to him, and as warranted by no grounds of reason or justice applicable to the case." He argued, that the time which had been allowed for preparation was quite sufficient; as the greater part of the evidence adduced in his defence had been long familiar to the managers. This allegation was true; but it is one thing to have

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been long familiar with a great mass of evidence; and another thing to be able to speak upon it; and to show accurately the force with which it applies to all the parts of a complicated question. It is remarkable that the zeal of Mr. Hastings, not perhaps unnatural, to accuse his prosecutors, should have made him forget that the world would see and feel this distinction. Not only was a very intense process of thought necessary to determine with precision what should be done with every portion of so vast an aggregate of evidence; but the labour was immense to fix every portion, and that which was to be done with it, in the memory;[1] a task which could not be performed till the very time arrived when the tongue was immediately to deliver what the memory contained.

Lord Stanhope, in his zeal for the defendant, moved the House to give notice to the Commons, that the Lords would proceed on the trial on Wednesday next. Lord Abingdon said, "to refuse the application of the Commons would bring a national censure on the House." He asked, "Do your Lordships mean, by a side wind, or some other manœuvre, to get rid of this trial?" Lord Grenville, then rising, proposed an amendment, that instead of "Wednesday next," these words should be inserted, "the second Tuesday in the next session of parliament." After some explanation and debate, the amendment was carried by a majority of 48 to 21.[2]

[1] How is this consistent with the former argument in favour of the prompt decision on the ground that the evidence was then easily recollected.—W.

[2] Minutes, ut supra, p. 2090—2323; History of Trial, ut supra, part vi. p. 55—78.

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The proceedings on the trial were resumed by the House of Lords, on Thursday the 13th of February, 1794, the one hundred and eighteenth day of the trial. The counsel for the defendant having requested to take the evidence of Lord Cornwallis, who had just arrived from India; and the managers having given their assent, not as to a right, but an indulgence, the Lords adjourned the trial to Wednesday next. "The delay," says the historian of the trial, "was occasioned by complaisance to Lord Cornwallis, who, it was supposed, might want time to refresh his memory, with the perusal of official papers, before he appeared in the character of a witness, in the impeachment." This was an abundant allowance for refreshing the memory of a witness, compared with the time to which the Lords and the prisoner at their bar contended, at the conclusion of the preceding session, for restricting the managers in making ready for the reply. In consequence of the indisposition of the Noble Marquis, the trial was further postponed to the 24th, and then to the 25th of the same month; when it was announced on the part of the defendant, that, in consequence of the continued indisposition of Lord Cornwallis, he waved the benefit of his evidence. The managers expressed their readiness to permit his Lordship to be examined at any period during the remainder of the trial; and at the same time alluded to the arrival of another gentleman, Mr. Larkins, whose testimony, when it was not obtainable, Mr. Hastings had described as calculated to be of the utmost service to him, but, to their great surprise, showed no inclination to avail himself

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of it, now when it was at his command. Mr. Law said he disdained to accept for his client, as a boon, the power, which was his right, of adducing evidence at any period of his trial; that his client rested his defence upon the grounds already adduced, and was not accountable to any man for the motives which induced him to call or not to call any man as a witness. Mr. Law forgot, or wished his hearers to forget, that the question was not about *accountability*, but about *evidence;* whether by not calling Mr. Larkins, whose absence he had formerly deplored, he did not render the sincerity of that lamentation doubtful, and add to the circumstantial evidence against a cause, for the defence of which, so much artifice was employed: The proper business of Mr. Law would have been to show, if he could, that for such inferences, however natural, the fact of not calling now for the evidence of Mr. Larkins did not afford any ground.

The managers produced evidence to rebut the defence on the Benares charge. It had been stated, that if Mr. Hastings acted wrong in the demands which he made upon Cheyte Sing, Mr. Francis concurred with him. The managers proposed to call Mr. Francis, to show that he did not. The counsel for the defendant objected. They affirmed, that on the reply, the prosecutor was entitled to bring evidence for one purpose only; that of rebutting evidence adduced on the defence: If not for this purpose, it ought to have been given at first, to enable the defendant to meet it in his defence.—This was rather inconsistent with the doctrine of Mr. Law, when, alluding to the offer of the managers to permit the

examination of Lord Cornwallis and Mr. Larkins, he claimed for his client a right to bring any evidence at any period of the trial. The objection about meeting such evidence, on the defence, might be answered, by granting, which would be due, a power of meeting new matter of crimination, by new matter of defence. The objection is, that this would tend to delay; but so it would, if the same matter had, in the first instance, been added respectively to the matter of crimination and that of defence; and it would always be a question, to be left to the court, whether the importance of the evidence was enough to compensate for the inconvenience and delay; and whether any thing sinister was indicated by giving it after, rather than before, the defence. Mr. Burke made a speech, in disparagement of the lawyers' rules of evidence; which he said were very general, very abstract, might be learned by a parrot he had known, in one half hour, and repeated by it in five minutes; might be good for the courts below; but must not shackle parliament, which claimed a right to every thing, without exclusion, or exception, which was of use to throw light on the litigated point.

After a dispute, which lasted for the greater part of two days, the Commons were informed, that it was not competent for them to adduce the evidence proposed. Mr. Burke again complained bitterly of the want of publicity in the deliberations which led to the decisions, and the ignorance in which the managers were held of the reasons on which they were grounded. It was thus impossible they could know before-hand whether a piece of evidence, which presented itself to them as important, would, or

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would not, be admitted by the Lords. This refusal of reasons was one of the causes of that delay, of which so many complaints had been raised. Lord Radnor having interrupted him, as arguing against a decision of the House, Mr. Burke said, "What he asked from the House was *publicity* in its decisions on questions of law, and a communication of the grounds on which it formed those decisions. He had condescended to ask this as a *favour,* when he might have claimed it as a *right.*" Mr. Law said, he would not waste a moment of their Lordships' time, in supporting a judgment of the House, which, being founded on a rule of law, wanted no other support. Mr. Burke replied, that "he had been accustomed to insolent observations from the counsel; who, to do them justice, were as prodigal of bold assertions as they were sparing of arguments." Before the Court adjourned for deliberation, Mr. Hastings again addressed them, enumerated the miseries of delay, prayed for expedition, and, in particular, entreated their Lordships not to adjourn, as usual, on account of the absence of the judges during the circuit.

One of the reasons adduced by Mr. Hastings for the dethronement or deprivation of Cheyte Sing was the bad police of his country; to prove which, the outrages complained of by Major Eaton were adduced. The managers stated that "they would now produce a letter of Major Eaton's, to show he did not consider the supposed irregularities worth inquiring into. The counsel for the defendant objected to the evidence. The House informed the managers, that the whole Benares narrative, and the papers annexed, having been given originally by the ma-

nagers for the Commons, the evidence tendered was not admissible." Be it so. But that does not hinder this from proving the existence of the letter, and the insignificance of the occurrences on which the plea of Mr. Hastings was erected.

As the defendant had produced in evidence the vote of thanks offered to him by the Court of Directors on the 28th of June, 1785; to rebut this evidence, the managers offered to produce a paper printed for the information of the proprietors, by order of the Court of Directors in 1783. This was vehemently resisted, not only by the counsel for Mr. Hastings, but by himself in person, as an ill-considered and intemperate act of a Court of Directors, who were his political enemies. "It was, therefore, (he said,) a species of unparalleled cruelty to bring it forward to oppress a man who had already suffered so much, for no other reason which he could divine, than having at a time of great public danger, effectually served his country, and saved India. He relied upon their Lordships' humanity, honour, and justice, that they would not suffer this minute of the censure to be read; it being passed at a moment of intemperate heat and agitation, and utterly extinguished by a subsequent resolution.

"Mr. Burke rose as soon as Mr. Hastings had concluded, and contended that the paper was proper to be received, because it was an answer to a letter which the prisoner had dared to write to the Directors his Masters, and to print and publish in Calcutta.

"Mr. Hastings instantly rose, and said, 'My Lords, I affirm that the assertion which your Lord-

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ships have just heard from the Manager *is false.* I never did print or publish any letter in Calcutta that I wrote to the Court of Directors. I knew my duty better. That assertion is a libel; it is of a piece with every thing that I have heard uttered since the commencement of this trial, by that *authorized, licensed*,—(and after a long pause, he added, turning to Mr. Burke,) '*Manager!*'

"Mr. Burke continued to affirm that Mr. Hastings *had* printed and published the letter in Calcutta. Mr. Hastings loudly called out to him, it was not true; and the counsel said to Mr. Burke, *No! no!*"

The Lords adjourned, put the question to the judges, received their answer, and announced to the managers on a following day, "That it was not competent for the managers for the Commons to give in evidence the paper, read in the Court of Directors on the 4th of November, 1783, and then referred by them to the consideration of the Committee of the whole Court, and again read in the Court of Directors on the 19th November, 1783, and amended, and ordered by them to be published for the information of the proprietors—to rebut the evidence given by the defendant of the thanks of the Court of Directors, signified to him on the 28th June, 1785." No decision is more curious than this. The same sort of evidence exactly, which the Lords allowed to be given *for* Mr. Hastings, they would not allow to be given *against* him; one proceeding of the Court of Directors, as well as another. It might have been said, that a prior decision of the same court was superseded by a posterior; but this

should have been said after both were submitted to consideration, because it might be so, or it might not, according to the circumstances of the case.

On the 1st of March, the Lords not choosing to proceed without the assistance of the Judges, during their absence on the circuit, adjourned the court to the 7th of April. On the 6th of March, upon motion made in the House of Commons, by Mr. Burke, the managers were appointed a committee to inspect the journals of the House of Lords, and to examine into the mode of procedure that was adopted on the trial of Warren Hastings, Esq.; and on the 17th of the same month, it was ordered, on the motion of Mr. Burke, that the managers should lay before the House the circumstances which have retarded the progress of the said trial, with their observations thereon.

On the 9th of April, which was the second day of the proceedings after the adjournment for the circuit, Lord Cornwallis was examined on the part of the defendant. His evidence contributed little to establish any thing. If it tended to confirm the views, held up by any one of the parties, more than those by another, it was rather those of the accusers than those of the defendant. On the alleged right of the government to call upon the Zemindars in time of war, for aids, over and above their rents, he made one important declaration, that no such aid had been demanded in any part of India during his administration.[1]

As Mr. Hastings had declined, the managers

[1] There is nothing very important in this, it amounts to no more than that there had been no occasion to call upon them.—W.

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thought proper, to call for the evidence of Mr. Larkins. The first questions which they put were intended to elucidate the letter which Mr. Larkins, upon the application of Mr. Hastings, wrote to Mr. Devaynes, in explanation of the dates of a part of the presents which Mr. Hastings had received. The counsel for the defendant objected; contending that, in reply, evidence, though of a witness till that time in India, could not be admitted to new matter, or matter which had not been contested: but only to points which had been disputed, or evidence which had been attacked. Mr. Burke again disclaimed the authority of the lawyers; and said, "the defendant was placed by these arguments in the most contemptible point of view. He had been specifically charged with bribery, sharping, swindling: From these charges, he had replied, that the testimony of Mr. Larkins, if he had it, would vindicate him: Mr. Larkins was now present: But the prisoner, instead of wishing to clear his fame, called for protection against the testimony to which he had appealed; and sought a shelter, not in his own innocence, but in a technical rule of evidence." The Lords adjourned to deliberate, and when the court met on a future day, their Speaker announced, "Gentlemen, Managers for the Commons, and Gentlemen of Counsel for the Defendant, I am commanded by the House to inform you, that it is not competent for the managers for the Commons to examine the witness, in relation to a letter of the 5th of August, 1786, from the witness to William Devaynes, Esq. one of the Directors of the East India Company, produced as evidence in chief by the managers for

the Commons." Mr. Larkins was again called, and one of the first questions which were put was represented by the counsel for the defendant as falling under the same objection. But "so much, they said, had been uttered, about this testimony, and the motives of Mr. Hastings in resisting it, that any longer to forbear bringing these assertions to the test of proof, might perhaps seem to justify the insinuations which had been cast out against the defendant." Relying, therefore, on the justice and humanity of the House to prevent the protraction of the trial, on this or any other account, to another year, they gave their consent to the examination of Mr. Larkins, on the same terms as if he had been examined at the first stage of the trial. This day the Court received another of Mr. Hastings' addresses. Alluding to a report of an early prorogation of parliament, he conjured them to end his trial before the end of the session; affirming, "that human patience (meaning no disrespect to the Lords) could not sustain this eternal trial." Next day, also, time passing away in disputes about the admissibility of the questions which the managers tendered to the witness, Mr. Hastings rose, and said that, if the Lords would but sit to finish the trial during the present session, his counsel should make no objection to any questions that might be asked. He then made a pathetic statement, recounting the offers which he had made to wave his defence, the actual relinquishment of part of it, and his other sacrifices to expedite the trial, among which he stated his consent to the examination of Mr. Larkins. He ended by praying that the

court would sit on the following day, and permit that examination to be closed.

1794. This was on the 16th of April. On the 17th Mr. Burke, in the House of Commons, brought up the report of the managers appointed to inquire into the causes of the delay in the trial of Mr. Hastings. An ample view of this important document is required. But it would interrupt too long the proceedings on the trial, and may be reserved till they are brought to a close.[1] The lawyers, whom it desperately offended, because it spoke out, respecting their system, a greater than usual portion of the truth, argued against the printing of it; as in this, however, Pitt and Dundas took part with the managers, the opposition of the lawyers failed.

The examination of Mr. Larkins was concluded on the 28th of April, having, together with the disputes to which it gave occasion, occupied the time of the court for rather more than three days. It had a tendency, but no more than a tendency, rather to clear than convict Mr. Hastings of any intention at any time to appropriate to himself any part of the presents, the receipt of which he afterwards disclosed; because the money, though entered in the Company's books as money of Mr. Hastings, was not entered as such in the accounts kept of his private property by Mr. Larkins. The only new fact of any importance was, that a balance of the presents, received by Gunga Govind Sing for Mr. Hastings, was never paid to Mr. Hastings; who stated, with some marks

[1] See Appendix at the end of this chapter.

of displeasure to Mr. Larkins, that Gunga Govind Sing pretended he had expended one lac of rupees, (10,000*l.*) during the absence of Mr. Hastings, in jewels, for a present to Mrs. Wheler, the wife of the member of council, upon whom, together with the Governor-General, the weight of administration at that time reposed.

Of the money which Mr. Hastings had desired to borrow of the Raja Nobkissen, and which he said he had afterwards, upon the entreaty of the Raja, accepted as a present, it appeared that Nobkissen had afterwards demanded payment, when Mr. Hastings had met the demand by what the lawyers call *a set-off*, or counter claim upon the demandant. Nobkissen had then filed a bill of discovery against Mr. Hastings in Chancery. The answer of Mr. Hastings was, that, as an impeachment was depending, he declined giving any answer at all. The managers proposed to give these proceedings in evidence. The lawyers of counsel for Mr. Hastings repelled them as inadmissible. Mr. Burke was provoked to language scarcely temperate: "He was addressing," he said, "a body of nobles who would act like nobles; and not as *thieves in a night cellar;* he could not suspect them of *so foul a thing* as to reject matter so pregnant of evidence: the notions of the Judges were not binding on the Lords: And the trial of Lord Strafford afforded an example to which, in this respect, he trusted they would always conform." The Lords took the rest of the day to deliberate; and on their next return to the hall of judgment announced, "That it was not competent to the managers for the

Commons to give in evidence the pleas put in by Warren Hastings, Esq., on the 14th of February and 25th of March, 1793, to the discovery prayed by a bill in Chancery, filed against him by Raja Nobkissen on the 27th of June, 1792, touching a sum of three lacs of rupees, or 34,000*l.* sterling money, mentioned in the sixth article of charge."

"As the counsel for the defendant had, on the Benares charge, the Begum charge, the charge of presents, and the charge of contracts, given evidence of the distresses of the country, as a justification, or excuse, of the irregular acts of extortion, oppression, bribery, and peculation, charged against the defendant in the articles of charge," the managers proposed to prove, that the cause of these distresses was the misconduct of Mr. Hastings, plunging the Company into a war with the Mahrattas, neither necessary nor just. To this evidence the counsel objected, and the Lords resolved that it was not admissible. Abundance of angry altercation took place both before and after the decision; and Mr. Burke, in the pursuit of his object, a pursuit always eager, now, in some degree, intemperate, exposed himself at last to the imputation of pushing his examinations too far, of putting frivolous, when his stock of important, questions was exhausted, and contending long for points, either of no importance, or points in which he might see that he would not succeed. Yet, in these aberrations of a mind, which had now, to a considerable degree, lost the command of itself, a very small portion of time; not six, possibly not so much as three days, in the whole of this protracted business, were

really misplaced by him, or fell to his share in distributing the blame of the unnecessary portion of delay.

Of the extraordinary proposition, to offer the injustice of the Mahratta war to rebut certain allegations of the defendant, Mr. Burke was probably the injudicious author. This was to bring a fact, to prove another fact, when the evidentiary fact was much more difficult of proof than the principal one; when the evidentiary fact was of such a nature, that it was either not susceptible of precise and conclusive proof; or opened so wide a field of inquiry, that the service it would render in the cause was evidently not a compensation for the trouble, which, in the shape of delay, expense, and vexation, it could not fail to create. This constituted a sufficient ground for the decision which, in this instance, was pronounced by the Lords. Mr. Burke, however, was so pertinacious, as to desire to enter against it a deliberate protest, which he tendered, in a writing of considerable length, and wished to have it entered upon the minutes. But the Lords informed him it could not be received.

After adducing evidence to several other points, the Commons offered matter to rebut the certificates, which had been presented in favour of the character and administration of the defendant, from several parts of India. They proposed to show, that these certificates could not be voluntary, because they were contradicted by the circumstances to which the people were reduced: and if so, these certificates were additional proofs of the atrocity, not of the beneficence, of the English government in India.

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Among other places, a certificate had arrived even from Dinagepore. To throw light upon this certificate, the managers offered to read the official report of an eminent servant of the Company, upon the government of this province. This was the famous document relative to the cruelties of Deby Sing.[1] Its admission was again resisted on the part of the Defendant. Again the Lords decreed that it was not to be heard.

The evidence was closed on the 6th of May, which was the 129th day of the trial. The advocate for the defendant having confidently told the Lords, "that all the attempts which had been made in the present session to support the case of the prosecution had ended in producing an effect directly contrary; and that important conclusions, which could not have escaped their Lordships' penetration, had resulted in favour of his client from the invaluable oral testimony lately given at their bar," (alluding to the testimony of Lord Cornwallis and Mr. Larkins, which just as little established any thing in favour, as it did in crimination of Mr. Hastings): and having thus, with a well-timed artifice, assumed, without proof, and as standing in need of no proof, all that he wished to be believed; he added, that, in imitation of the former sacrifices to which, for the sake of lessening the delay, enormous, dreadful delay, the defendant had already submitted, he would make another sacrifice (which, if that was true which had just been asserted by the counsel, was no sacrifice at all), and wave his right to make

[1] To have received it in evidence now, after it had been proved erroneous, would have been preposterous.—W.

any observations on the evidence which had been offered in reply.

The managers then proceeded to sum up the evidence in reply; Mr. Grey, on the Benares charge, Mr. Sheridan on that of the Begums, Mr. Fox on the charge of presents, and Mr. Taylor on that of contracts. In this business seven days were consumed. Mr. Burke began the concluding speech on the 28th of May, and continued his oration nine days. After the third day, another petition was presented from Mr. Hastings to the House of Lords, which, as it is not very long, and not slightly impregnated with instruction, is here inserted.

"That it is with the greatest reluctance and concern that your Petitioner feels himself obliged once more to address your Lordships on the subject of his long-depending trial.

"Your Petitioner begs leave to lay before your Lordships his well-founded apprehensions, excited by the manner in which the general reply on the part of the managers is now evidently conducted, that such reply is meant to be extended beyond the probable limits of the present session of parliament.

"Your Petitioner hopes he may be allowed to bring to your Lordships' recollection, that the reply was, at the instance of the managers, adjourned over from the last year, under the assurance of an accelerated and early termination of it; and that the whole of the present session, except a small interruption occasioned by the examination of the Marquis Cornwallis, has been employed by the honourable managers, notwithstanding that your Petitioner has, for the purpose of despatch, in addition to the sacrifices made

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for a similar purpose in the last year, waved his right to observe, by his counsel, on the new evidence adduced in reply.

"Your Petitioner begs leave again to suggest to your Lordships the unexampled duration of his trial; the indefinite period to which it may be still further protracted; and the extreme vexation and injury to which he would be subjected, if the intention on the part of his prosecutors should be suffered to have effect.

"He implores, therefore, of your Lordships' humanity and justice, that such measures may be adopted on the part of your Lordships, as may assure to your Petitioner the speedy termination of this painful and unparalleled proceeding; and further, if need should be, that your Lordships will graciously condescend, in such a manner as to the wisdom and dignity of your Lordships may seem meet, to become suitors to his Majesty's goodness in his behalf, that the present session of parliament may be permitted to continue till the reply on the part of the honourable managers for the House of Commons shall be fully and finally closed."

On the opening of the Court, on the first day after this petition to the House of Lords, Mr. Burke, says the historian of the trial, "began, by complaining in very strong terms, both of the Court, and of Mr. Hastings; of the latter for writing a most audacious libel, under the name of a petition; and of the former for having recorded it in their Journals. What the House of Commons would do, in consequence of this insult, he could not tell, as he had not had an opportunity of consulting the House upon it: he should,

therefore, proceed as if no such libel had been written." BOOK VI CHAP. 2.

Mr. Burke concluded his speech on the 16th of June. On the 20th, in the House of Commons, Mr. Pitt rose to move, "That the thanks of the House should be given to the managers appointed by them to conduct the prosecution against Warren Hastings, Esquire, for their faithful management in the discharge of the trust reposed in them." The motion was seconded by Mr. Dundas. Mr. Pitt declared, that the magnitude and difficulty of the task which had been imposed upon the managers, and the ability and diligence with which it had been sustained, excited the strongest sentiments in their favour. Delay was the great source of complaint; but if the long intervals of the Court were excluded, and the number of hours were computed which had actually been bestowed upon the business of the trial, it would be found, compared with the quantity of matter essentially involved in the cause, by no means unreasonably great. "The next point," he said, "to be considered was; of this time, whether great or small, how much had been occupied by the managers; and how much by the defendant, as well in the several replies, as by the unceasing and unwearied objections, taken on his part, to almost every thing offered on the part of the prosecution. To prove this disposition of objecting to evidence, gentlemen had but to look to the report made, by their committee, on the causes of delay. They would there find it proved.—It was, in the next place, to be recollected, that their managers had to discuss questions which they could not relinquish without abandoning the privileges of the Commons. 1794.

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—Upon all these grounds he would not allow that, if any unnecessary delay existed, any portion of it was chargeable to the managers for that House."

Mr. Sumner, regretting the unusual necessity which made him vote against the minister, opposed the motion. He said, "he was happy to avow himself a very great admirer of Mr. Hastings; that he looked up to him with every sentiment of regard and affection;" professing at the same time, "that his objections to the present motion arose from circumstances, utterly independent of Mr. Hastings." He excepted to the time of the vote, which, though not contrary to precedent, would have something of the effect of a pre-judging of the cause. However, he at last confessed, that he should have little objection to the vote, if it regarded only the rest of the managers without including Mr. Burke. Against him, he ran forth into a long invective; his anger appearing to be directed against the strong terms of disapprobation, which Mr. Burke had scattered with a lavish hand, not only on Mr. Hastings, but all other individuals whom he regarded as partners either in his crimes or their protection. Mr. Wigley, and others, concurred with him in his observations. Mr. Wyndham, Mr. Francis, and Mr. Fox said, that many of the expressions, adduced by the Gentlemen as the grounds of their opposition, were not correct: that they disclaimed the separation which had been made between them and their distinguished leader; and that it was affectation and the affectation of weakness, to pretend disgust at the natural language of a strong indignation, when calling for punishment on crimes which the managers believed to have been

committed, and to which, if they were committed, no language capable of describing them adequately could be found. Mr. Law, a servant of the Company, and brother of the Counsel for Mr. Hastings, made a speech against the *coarseness* of Mr. Burke, in such language as the following: "If any passage in his speech could be called sublime and beautiful; it was, at the best, but sublime and beautiful nonsense: At other times his expressions were so vulgar and illiberal, that the *lowest blackguard in a bear-garden* would have been ashamed to utter them." He was, indeed, surprised that a Right Honourable Gentleman (Mr. Fox) "should condescend to mix his character with that of the leading manager, whose follies and intemperance he had vainly endeavoured to correct. Whatever might be the abilities of the leading manager, he was totally unfit to conduct a public trial. His violence, his passion, and his obstinacy, were unconquerable. And as for his information," said Mr. Law, "I was really astonished, that a man who had been twenty-two years employed in Indian inquiries, should still be so very ignorant of India. His prejudices had totally warped his judgment."

Upon this latter point, the question was, whether it was Mr. Burke, or Mr. Law, who continued ignorant; and of which of the two it was that prejudices had perverted the judgment to the greatest extent. Mr. Law was very quietly making *himself* the standard of perfection; when, like so many of his brethren in India, he had hardly looked at a single object, except through the medium of prejudice; and had so little information about India,

BOOK VI CHAP. 2. as, on the great objects, to be wrong in every opinion which he entertained.[1]

1795. The vote for the thanks of the House was carried by a majority of fifty to twenty-one. The Speaker, in addressing the managers, said; "That the subject to which their attention had been directed was intricate and extensive beyond example: That they had proved it was well suited to their industry and eloquence, the exertions of which had conferred honour, not on themselves only, but on that House, whose credit was intimately connected with their own." Mr. Pitt moved that the Speaker do print his speech.[2]

No further proceeding was had on the trial till the

[1] This attack upon Mr. Law for the part he took in the debate, and the just reprobation he pronounced upon the intemperate language which even the friends and admirers of Burke admit that he sometimes employed, is wholly unwarranted by his speech. There was nothing wrong in his opinions on the subject, and on what others he erred in consequence of his ignorance of India, it would be difficult to substantiate. He asserted that the charge recently repeated in the French convention, that the English were the authors of the famine that occurred in Bengal in 1770, was calumnious and untrue. That the atrocities of Deby Sing had been investigated by a Committee, and proved to be false, and that the original reporter disclaimed his own report as criminating Hastings. That Hastings was not a man of low, vulgar, and obscure origin, nor of base, mean, and sordid occupations. Few will accuse Mr. Law of either error or ignorance in these assertions. He may have erred in his estimate of Burke's motives and conduct, but it cannot in justice be said that therefore only, and his speech furnishes no other grounds, he looked at every object through the mist of prejudice, and was utterly wrong in every opinion he entertained regarding India. It is difficult to understand what part of Mr. Law's speech, the only occasion in which he comes before the reader, could have provoked such gratuitous and unqualified condemnation. Mr. Sumner was much more severe in his censure of Burke's proceedings and language. Why has he escaped? Report of the debate of the 20th June, 1794. History of Hastings's trial.—W.

[2] For the evidence, and incidents on the reply, see the printed Minutes, ut supra, p. 2179—2851; History of the Trial, ut supra, part vii.

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next session of parliament. The 13th day of January, 1795, was the day on which the business was appointed to begin. On that day a committee of the Lords was formed, to inspect the journals, and to report on what they contained, respecting the mode of giving judgment on trials of high crimes and misdemeanours. The report was referred to a committee of the whole House, which began to deliberate on the 2nd of March. Though, at the beginning of the trial, it had been determined by the Lords, that they should not proceed article by article, but that all the articles should be lumped together, both in the prosecution and the defence; it was now represented, by Lord Thurlow, who had before this time resigned the woolsack to Lord Loughborough, not only that they must not take, for decision, the articles all in the lump; but that it would be too much for their Lordships to take them even one by one; that it would be necessary, as several of the articles contained several allegations, to break these articles into separate parts, and to deliberate and decide separately upon each. How severe a condemnation this pronounced upon the former decision, by which the whole evidence was demanded in a lump, not one of their Lordships remarked; but they all agreed in the present propriety of that expedient for distinctness which they had formerly renounced and prohibited.

The procedure adopted by their Lordships was, to decide upon each point three times; first in a committee of the whole House; next in the House itself; and a third time as judges in Westminster-hall. Twenty-three questions were formed, upon those

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articles of impeachment to which the Commons had tendered evidence, and one upon the rest. Upon most of the questions, a debate of considerable length ensued. Lord Thurlow was the strenuous advocate of Mr. Hastings, upon all points; and argued to show from the evidence that no criminal fact whatsoever was proved. Lord Loughborough, the Chancellor, took a different course, and argued to show that of the allegations to which the Commons had adduced their evidence, almost all were proved. It was not till the last day of March that the deliberations of the committee were closed, and their resolution upon each of the questions was pronounced. On all of them the vote passed in favour of Mr. Hastings. On the next day, when, agreeably to form, the resolutions were reported to the House, Lord Thurlow moved, that the resolutions reported be read one by one, and a question put upon each. The Lord Chancellor, and several other Lords, contended that this was a proceeding altogether nugatory, if not ludicrous; it was to vote the same questions, first on one day, and then on another, on no other account than a change of name; they were called the Committee the one day, the House the other; but no man was bound as a judge, by the decisions either of the Committee or the House; though assuredly embarrassment would be thrown in the way of their determinations as a tribunal, by a reiteration of votes on the same subject, given when they were not a tribunal. The motion of Lord Thurlow was, nevertheless, carried, by a majority of fourteen to six; and the resolutions one after another obtained a second assent.

The business was not resumed till the 7th of April, when the form was determined of the questions which were to be put to the Lords individually in Westminster-hall. Some discussion occurred, and the questions agreed upon differed considerably from those, on each of which the House had passed a couple of preparatory votes. They proceeded to judgment on the 23rd: when the questions were put and determined in the following mode:

"1. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged by the Commons in the first article of charge?

"George Lord Douglas (Earl of Morton in Scotland), how says your Lordship, Is Warren Hastings Esq. guilty, or not guilty, of the said charge?

"Whereupon Lord Douglas stood up uncovered, and laying his right hand on his breast, pronounced —Not guilty, upon my honour.

"The Lord Chancellor then put the same question to all the Peers in robes, as follows:

"James Lord Fife, how says your Lordship?—Not guilty, upon my honour.

"Charles Lord Somers, how says your Lordship? —Not guilty, upon my honour.

"Francis Lord Rawdon (Earl of Moira in Ireland), how says your Lordship?—Not guilty, upon my honour.

Thomas Lord Walsingham, how says your Lordship?—Not guilty, upon my honour.

"Edward Lord Thurlow, how says your Lordship? —Not guilty, upon my honour.

"Martin Lord Hawke, how says your Lordship? —Not guilty upon my honour.

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"Frederick Lord Boston, how says your Lordship?—Not guilty, upon my honour.

"Edwin Lord Sandys, how says your Lordship?—Not guilty, upon my honour.

"Henry Lord Middleton, how says your Lordship?—Not guilty, upon my honour.

"Samuel Lord Bishop of Rochester (Dr. Horsley), how says your Lordship?—Not guilty, upon my honour.

"John Lord Bishop of Bangor (Dr. Warren), how says your Lordship?—Not guilty, upon my honour.

"Thomas Lord Viscount Sidney, how says your Lordship?—Not guilty, upon my honour.

"George Lord Viscount Falmouth, how says your Lordship?—Not guilty, upon my honour.

"Henry Earl of Caernarvon, how says your Lordship?—Guilty, upon my honour.

"Joseph Earl of Dorchester, how says your Lordship?—Not guilty, upon my honour.

"Algernon Earl of Beverley, how says your Lordship?—Not guilty, upon my honour.

"Jacob Earl of Radnor, how says your Lordship?—Guilty, upon my honour.

"William Earl Fitzwilliam, how says your Lordship?—Guilty, upon my honour.

"George, Earl of Warwick, how says your Lordship?—Not guilty, upon my honour.

"George William Earl of Coventry, how says your Lordship?—Not guilty, upon my honour.

"John Earl of Suffolk, how says your Lordship?—Guilty, upon my honour.

"George Marquis Townshend, how says your Lordship?—Not guilty, upon my honour.

" Francis Duke of Bridgewater, how says your Grace ?—Not guilty, upon my honour.

" Francis Duke of Leeds, how says your Grace ?—Not guilty, upon my honour.

" Charles Duke of Norfolk, how says your Grace ?—Guilty, upon my honour.

" David Earl of Mansfield, how says your Lordship ?—Not guilty, upon my honour.

" William Lord Archbishop of York, how says your Grace ?—Not guilty, upon my honour.

" Alexander Lord Loughborough, the Lord Chancellor, pronounced—Guilty, upon my honour.

" Upon the remaining fifteen questions the Peers voted in the following manner :

" 2. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged by the Commons in the second article of charge ?—Guilty, six.—Not Guilty, twenty-three.

" 3. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the sixth article of charge, in so far as relates to the said Warren Hastings having in the years 1772, 1773, and 1774, corruptly taken the several sums of money charged to have been taken by him in the said years, from the several persons in the said article particularly mentioned ?—Not guilty, twenty-six.

" 4. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the sixth article of charge, in so far as relates to his having, on or before the 26th of June, 1780, corruptly received and taken from Sadanund, the Buxey of the Raja Cheit Sing, the sum of

two lacs of rupees, as a present or gift?—Guilty, four.—Not Guilty, twenty-three.

"5. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the sixth article of charge, in so far as relates to his having, in October, 1780, taken and received from Kelleram, on behalf of himself and a certain person called Cullian Sing, a sum of money amounting to four lacs of rupees, in consideration of letting to them certain lands in the province of Bahar in perpetuity, contrary to his duty, and to the injury of the East India Company?—Guilty, three.—Not Guilty, twenty-three.

"6. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the sixth article of charge, in so far as relates to his having, in the year 1781, received and taken as a present from Nundoolol, the sum of fifty-eight thousand rupees?—Guilty, three.—Not Guilty, twenty-three.

"7. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the sixth article of charge, in so far as relates to his having, on or about the month of September, 1781, at Chunar, in the Province of Oude, contrary to his duty, taken and received as a present from the Vizir the sum of ten lacs of rupees?—Guilty three.—Not Guilty, twenty-three.

"8. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the sixth article of charge, in so far as relates to his having first fraudulently solicited as a loan, and of his having afterwards corruptly and

illegally taken and retained as a present or gift, from Raja Nobkissen, a sum of money amounting to 34,000*l.* sterling; and of his having, without any allowance from the Directors, or any person authorized to grant such allowance, applied the same to his own use, under pretence of discharging certain expenses said to be incurred by the said Warren Hastings in his public capacity ?—Guilty, five.—Not Guilty, twenty.

"9. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to his having, in the year 1781, granted a contract for the provision of opium for four years, to Stephen Sulivan, Esq. without advertising for the same, and upon terms glaringly extravagant and wantonly profuse, for the purpose of creating an instant fortune to the said Stephen Sulivan ?—Guilty, five.—Not Guilty, nineteen.

"10. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to his having borrowed money at a large interest, for the purpose of advancing the same to the contractor for opium, and engaging the East India Company in a smuggling adventure to China ?—Not Guilty, twenty-five.

"11. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the contract for bullocks granted to Charles Croftes, Esq. ?—Guilty, three.—Not Guilty, twenty-three.

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"12. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to his having granted the provision of bullocks to Sir Charles Blunt by the mode of agency?—Guilty, three.—Not Guilty, twenty-three.

"13. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the several allowances charged to have been made to Sir Eyre Coote, and directed to be paid by the Vizir for the use of the said Sir Eyre Coote?—Guilty, four.—Not guilty, twenty-two.

"14. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the appointment of James Peter Auriol, Esq. to be agent for the purchase of supplies for the relief of the Presidency of Madras, and all the other Presidencies in India, with a commission of fifteen per cent.?—Guilty, four.—Not Guilty, twenty-two.

"15. Is Warren Hastings, Esq. guilty, or not guilty, of high crimes and misdemeanours, charged upon him by the Commons in the fourth article of charge, in so far as relates to the appointment of John Belli, Esq. to be agent for the supply of stores and provisions for the Garrison of Fort William in Bengal, with a commission of thirty per cent.?—Guilty, three.—Not Guilty, twenty-three.

"16. Is Warren Hastings, Esq. guilty, or not

guilty, of high crimes and misdemeanours, charged upon him by the residue of the impeachment of the Commons? —Guilty, two.—Not Guilty, twenty-five."[1]

On the 29th of May, at the desire of nine Proprietors, a General Court of the East India Company was held; at which two resolutions were passed, recommending that indemnification should be made by the Company to Mr. Hastings for the legal expenses incurred by him in making his defence; and that, in consideration of his important services, an annuity of 5000*l.* out of the territorial revenue should be granted to him and his representatives, during the term of the Company's exclusive trade. Both questions were determined by ballot, one on the 2nd, the other on the 3rd of June. These proceedings were communicated to the ministers on the 24th of June; by whom the questions were referred to the law officers of the crown. Legal doubts existed whether, under the legislative appropriation of the Company's revenues and profits, any fund existed from which the proposed allowances could be drawn. For a time the ministry showed no disposition to let the munificence of the Company obtain its effect. The application was not answered till the 13th

[1] In this concluding part of the business of the impeachment, has been followed a volume in quarto entitled "Debates of the House of Lords, on the Evidence delivered on the Trial of Warren Hastings, Esquire; Proceedings of the East India Company, in consequence of his Acquittal; and Testimonials of the British and Native Inhabitants of India, relative to his Character and Conduct whilst he was Governor-General of Fort William in Bengal."—This was a volume compiled and distributed under Mr. Hastings' directions, and at his expense, but never published. The contents of it, however, are found almost verbatim in the History of the Trial, (part viii.) to which reference has been so frequently made.

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of January, 1796; and then the answer was unfavourable, with respect to both parts of the donation. The question, however, did not rest. A negotiation was carried on between the Court of Directors, and the Board of Control. Finally, on the 2nd of March, it was announced at a General Court, that the Board of Control, and the Court of Directors, had agreed in the propriety of granting to Mr. Hastings an annuity of 4000*l.* for twenty-eight years and a half, to commence from June 24th, 1785.[1] Nothing as yet was determined respecting a re-imbursement of his law expenses, but, in order to relieve him from his present embarrassments, 50,000*l.* was lent to him, by the Company, without interest, for eighteen years.[2]

[1] Debates of the House of Lords, &c., ut supra, p. 331—495.

[2] When 16,000*l.* of this loan had been repaid, the rest was remitted, and in 1814 his pension was continued for the remainder of his life. In 1813 W. Hastings was called upon to give evidence on matters affecting the renewal of the East India Company's Charter before the House of Commons; and upon his retiring, the members paid him the compliment of rising simultaneously from their seats; he was shortly afterwards elevated to the station of Privy Counsellor. In 1820 it was resolved by the Court of Proprietors that a statue of him should be placed in the Court Room; and about the same time a meeting of the inhabitants of Calcutta voted the erection of a statue of him in that city. The speeches made upon this latter occasion by several distinguished servants of the Company are worthy of notice as ingenuous avowals of the dissipation of prejudices contracted in early life from a perusal of the speeches of Sheridan and Burke, by a more mature judgment, and a nearer acquaintance with the people of India. It was also remarkable that the Governor-General to whom application was necessarily made for the purpose of carrying the vote into effect, the Marquis of Hastings, had been one of his predecessor's judges. He not only expressed his ready concurrence in the proposed tribute, but stated that he had been most punctual in his attendance during the trial, that he had pronounced conscientiously a verdict of acquittal; and that all which he had learned since his arrival in India strongly supported the rectitude of the verdict which he had delivered in England. Asiatic Journal, March 1820.—W.

The observations that have been scattered through the preceding notes will have sufficiently expressed the views entertained by the writer of the administration of Warren Hastings; but as in attendance upon the text they have been spread over a considerable space in a detached, and not always methodical manner, a summary review of the measures by which that administration was characterized may not be without its use.

In considering the occurrences which took place during the administration of W. Hastings, whether civil or military, the peculiarities of the position of the English in India should always be borne in mind. A great territory had been acquired by a rapid succession of unexpected and extraordinary events, and the servants of the Company were conquerors and kings, where but a very short time before they had been barely suffered to trade. At the date of Hastings's appointment to the station of Governor-General, scarcely ten years had elapsed since the expulsion of the last independent Nabob of Bengal, Kasim Ali Khan, and the assumption of the supremacy over the Bengal provinces by the Company. It was utterly impossible that in so brief an interval the information should have been acquired which was essential to the good government of a numerous population, of whose language, manners, opinions, and laws, their new rulers were ignorant, or that the resources and relations of the surrounding states, with some of which no intercourse had been opened, and with none of which had any intimate connexion been fully established, should have been thoroughly investigated, and accurately understood. In all the discussions which took place at home, these considerations seem to have been overlooked, and expectations were evidently entertained that the Indian governments should have been guided in their measures by an experience which it was impossible they could have gained, and by fixed principles which they had yet enjoyed no means of forming. The expectations were most unreasonable, and the manner in which their disappointment was resented was most unjust.

With the appointment of W. Hastings in 1772, ceased the attempt to administer the affairs of Bengal in concert with the Court of Moorshedabad, and under the mask of its nominal authority. The Company stood forth, as they expressed it, as Dewan. The change, as the text truly defines it, was enormous, it was an innovation which affected the tenure of all property, and completely altered the administration of justice. It was the duty of Hastings to carry this momentous revolution into effect, and he accomplished the task with intense labour and consummate ability.

W. Hastings brought with him to the arduous duties assigned to him qualifications which have always been rare in India, but which were then much less frequently found in the Company's servants than they have since been, knowledge of the language of the people, of their manners and institutions, and conversancy with the details of both native and British rule. No time, therefore, was lost in fitting himself for his duties. He at once took his place as President of two Committees, one for the investigation of the mode in which justice had been administered under

the Mohammedan government, and the other for the ascertainment of the manner in which the revenues had been collected, and the amount which might be levied without oppressing the people. Full reports on both subjects were prepared, and plans devised for adapting the conduct of affairs to the change in those by whom they were in future to be conducted. That the plans so devised, and which were avowedly experimental, should have been at once free from imperfection, was not within the scale of human wisdom. They required, and they received, during the whole period of the government of Hastings, constant and careful investigation, and they were subjected to frequent modifications. Many of their provisions, however, whether principal or subsidiary, have been ratified by time, and the institution of Provincial Courts and Courts of Appeal, or the Dewannee and Nizamut Adauluts, of provincial collectors, of the Salt Agency, the Presidency Treasury, and the Board of Revenue, which are still the principal instruments for carrying on the revenue and judicial functions of the government owe their origin to W. Hastings.

The inquiries and enactments which necessarily accompanied the reorganization of an extensive country in which all the old institutions had been abruptly overturned, might of themselves have been considered a sufficient demand upon the time and deliberations of the head of the government; but his measures were delayed, thwarted, and not unfrequently frustrated, by the systematic opposition which he experienced from his colleagues, and the insubordination which their example and encouragement spread amongst the service. Embarrassment also arose from other quarters. In the third year of his administration the Supreme Court commenced its operations, and was very soon engaged in a contest for authority with the Governor-General and his council. The contest lasted for some time, and seriously aggravated the difficulties which attended the introduction of the new system of judicature, as well as the anxieties and embarrassments of the government. The pretensions of the Court were firmly but respectfully resisted; they were moderated by the compromise which Hastings judiciously effected in placing the Chief Justice at the head of the native courts, and they were finally circumscribed by the interference of Parliament. However troublesome and vexatious the usurpations of the Court must have been, it is worthy of remark that no violence was permitted in the opposition of the government, and that no interruption occurred to the personal intimacy of the Judges and the Governor-General.

Nor was there any intemperance in the conduct of Hastings towards his colleagues, although their animosity assailed his private character as well as his public measures. They brought natives into the Council Room to charge him in his seat of office with gross corruption; they endeavoured to compel his resignation by force, and he was obliged to vindicate his reprobation of their proceedings by the exposure of his life in a duel. That opposition so inveterate and incessant must have grievously imbittered his life, aud enhanced the anxieties and labour of his high office, cannot admit of question, whilst it is singularly characteristic of the spirit of his adminis-

tration, that he inflexibly though calmly persisted in the prosecution of those public objects which he deemed wise and expedient, and ultimately triumphed over talented as well as virulent opposition.

The public measures of W. Hastings were not only embarrassed by local instructions, but had to contend with formidable obstacles at home. His antagonists at the Council Board were the creatures of the minister, and were sure of his support. The same interest created a strong party against Hastings in the Direction, and more than one occasion showed that the ministry and the Directors were both eager to get rid of him. For a public man, in the service of England, to rely solely upon his public merit, would be indeed to lean upon a broken reed; he must meet party with party; he must make 'friends.' Hastings was not exempt from this necessity, and he was successful. Many of his friends were, no doubt, attached to him on account of his personal worth; and it was justly remarked that no man ever had more zealous friends than he had. Some persons possibly supported him on public grounds, but the large majorities that protected his interests in the Court of Proprietors, must have been influenced by other motives. The obligation of securing their support, as well as that of vindicating his measures to the Directors, in opposition to their sentiments, must have been a plentiful source of embarrassment, anxiety, and labour. The correspondence and the Minutes of Council which proceeded from the pen of Hastings are most voluminous. It is evident that he never meditated but on paper, and it is difficult to conceive a moment when his mind and his pen could have been at rest. Yet even the immense toils of his civil administration, and the public and private difficulties by which his whole path was beset, constituted but the minor events by which his government was characterized. The greater proportion of the period of his administration was a season of warfare, during which the very existence of the British power in India was at stake.

W. Hastings had scarcely assumed charge of his appointment, when he found himself engaged in the reduction of the military power of the Rohillas. The transaction did not originate with him, it was a legacy from his predecessors; and in continuing to take part in it, he acted, not as a principal, but as the confederate of the Nawab Vizir. That the government of Oude had justifiable grounds for seeking to annihilate the political existence of the Rohillas, is undeniable. They were dangerous neighbours, and had been hostile from the first aggrandizement of their leaders. There had always been a struggle for mastery between the principalities, and it was not possible that it should terminate without the subjugation of one or the other. Policy the most palpable, instigated the Vizir to accomplish their annihilation, not, as absurdly misrepresented, as a people, but as a power. Policy equally obvious urged the British government to fulfil the spirit of the stipulations into which they had entered with the Vizier, as the means of conciliating the only potentate in Hindustan able and disposed to form with them a counterpoise against the Mogul and the Mahrattas. Feeble as the Court of Delhi had become, its extreme

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weakness was not suspected, and in the name of the king it still possessed a formidable watchword which might have combined the strength of India against the English. The power of the Mahrattas was great, and was imagined to be still greater. It was impossible that they should not look with evil eyes upon the rich plains of Bengal and Behar, now defended against their spoliations, and they claimed the districts of Corah and Allahabad on the part of the Mogul. They had, therefore, powerful inducements to assail the English in addition to those of a more truly national policy. Had the princes of India been capable of foresight or combination, they would not have suffered the dominion which a handful of foreigners had founded, to have grown into a fearful predominance. They were able at this time to have crushed the infant empire, and it was but prudent to anticipate that they would attempt it. It was known that a coalition of the Mogul, the Mahrattas, and the Rohillas had been contemplated, and it only wanted the accession of the Vizir to have rendered the situation of the English more perilous than when they contended with Suraj ad Dowla alone. It was, therefore, of infinite importance to preserve the friendship of the Vizir, and to contribute to the improvement of his resources by the cession made to him of Corah and Allahabad, and the assistance given to him against irreconcilcable enemies. It was taking a very narrow view of the policy of Hastings, to ascribe his support of the Vizir to pecuniary considerations alone. The payments made by him, however convenient to the government, were but minor and subsidiary advantages. The main purpose of Hastings was the friendship of Oude, and he succeeded in preserving it. Events testified the wisdom of his policy. He was able to apply the whole of his resources to meet the perils which presently came fast upon the English from other quarters, because he was secure in the direction of Oude: he was able to encounter and overcome enemies the most formidable in Western India and the Dukhin, because, in consequence of his relations with the Vizir, he had nothing to apprehend from enemies in Hindustan.

The Rohilla campaign was scarcely at an end—the arrangements for the conduct of civil affairs were yet incomplete—when the distractions of the councils of Bengal commenced, and were speedily followed by the announcement of hostilities between the Presidency of Bombay and the much dreaded and really dangerous confederacy of the Mahrattas. These hostilities were suspended for a time by the pacific intervention of the government of Bengal, but they were renewed in 1778, with the approbation of the Court of Directors, and the concurrence of the Supreme Government. The support given by Hastings was decided, judicious, and vigorous, and generally without the co-operation, or in despite of the counteraction of his colleagues. By timely negotiations he deterred a leading member of the Mahratta State, the Bhonsla Raja, qualified by his position and power to have inflicted a deadly blow upon the resources of Bengal, from taking any part in the contest, and by an operation of singular daring, considering the time and circumstances—that of sending an army to the assistance of Bombay across the whole of central India, he not

only afforded aid of vital importance to the sister Presidency, but exhibited to the native states a proof of the spirit and resources of the government of Bengal, which struck them with salutary astonishment and apprehension.

Early in the year 1779, that of the very first campaign, the British arms on the side of Bombay sustained a disgraceful discomfiture, and the safety of the troops was purchased by an ignomiuious pacification. The terms were not ratified by the Mahratta ministers, and an opportunity was afforded to Bombay to redeem its reputation. This was the only advantage that resulted from the rencwal of hostilites. The Mahratta armies, notwithstanding the courage with which they were opposed, were not to be resisted; they overran the Konkan—cut off all the resources of the Bombay Presidency, and left it wholly dependent upon Bengal for means to defray not only its current expenditure, but the pay of thc troops. There wanted but the co-operation of the Bhonsla and Sindhia to have expelled the English entirely from the coast of Malabar. The providence of Hastings had kept the former quiet, and his energy recalled the latter to the defence of his territories in Hindustan. The success of the armament despatched by Hastings against Malwa disposed Sindhia to peace, and by his intermediation also the war was brought to a close at a season when the pressure of other enemies added to the difficulty and danger of its continuance.

About the time when hostilities with the Mahrattas commenced, information reached India of a war with France. The coast of Coromandel necessarily became the scene of hostile movements. At first, the proceedings of the Madras Presidency were successful, but great exertions were made by France, and during the five years that the war continued, the French forces, both by land and sea, acquired many advantages, and were upon the eve of obtaining a formidable superiority on the coast, when peace between the parent countries was restored. It was not only by their own strength, however, that the French were dangerous: their hostility was rendered more alarming by the peril to which Madras was exposed from a still more implacable and powerful foe.

When war with the Mahrattas and the French was fairly on foot, thc Madras Government, although unable to maintain, without assistancc from Bengal, the contest with the latter, wantonly offered insult aud injury to the Nizam and to Hyder Ali, the warlike sovereign of Mysore. The two princes were on the eve of an alliance with the Mahrattas aud the French, when the Nizam was diverted from his purpose by the prudent interference of Hastings; and it was well that it was so, for although not of much account in himself, the Nizam, aided by a French corps, and acting simultaneously with Hyder would probably have effected the ruin of Madras. Even without his aid, Madras was saved with difficulty, and it was saved by Bengal. Hyder Ali broke into the Carnatic when no preparation had bcen made to resist him—formed an alliance with the French—cut to pieces one division of the army sent against him, and drove the other to the walls of Madras. The whole of the country was in his possession:—thc Presideucy, was utterly destitute of military stores, of money,

and even in want of food. It was preserved from destruction, and enabled ultimately to effect a peace on advantageous terms with Tippoo, entirely by the prompt and extensive supplies which the energy of Hastings provided. The war ceased only the year before the term of his government expired.

Here then was a distant warfare maintained for several years with the two most powerful and warlike states of India—Hyder and the Mahrattas, and with a formidable European rival, entirely by the resources of Bengal. These, under the administration of Hastings, were large, but they were not illimitable, and they had demands of their own to answer. Such was the annual provision of the Company's investment, the main stay of their credit and disbursements in England, and amidst all the financial embarrassments of the Government of Bengal, this was never interrupted. As, however, the ordinary means at his command were not adequate to the emergencies of his situation, Hastings had recourse to those which were the principal topics of his subsequent impeachment. He demanded contributions of Cheit Sing, and countenanced the Nawab Vizir's resumption of that wealth from which alone he could discharge his debt to the Company and furnish the Government with that pecuniary aid which was urgently needed. It was preposterous to tax Hastings with either tyranny or avarice on these accounts. He had no aim in gathering treasures into the coffers of the Company, except pouring them forth again for the equipment of those armies and fleets upon which the safety of British India depended. He may be charged with rigour in the execution of his resolves, but those resolves were dictated by an imperious necessity, and there was no time for hesitation. To have admitted of any temporising would have been a weakness that might have entailed the loss of Bombay and Madras, if not the extinction of the British power in Bengal. It was the characteristic merit of Hastings to resolve calmly and act resolutely. He says of himself, with perfect truth, "it was ever my rule in all political transactions, however I might allow myself to hesitate in forming plans of action, to prosecute them, when they were formed, with a fixed and undeviating resolution, to their accomplishment."

These are the great features of the administration of Hastings. In the civil branch of his government he laid, amidst many obstructions from ignorance and animosity, the foundations of the judicial and revenue systems which have ever since prevailed, and in despite of equal embarrassments and opposition in the conduct of the military transactions in which he was involved, he rescued the Presidencies of Bombay and Madras from the most imminent peril, and placed the British power in India in a position beyond the reach of future danger from hostile aggression. Clive acquired an empire; its perpetuation is due to Hastings.

The limits of a note have been already too much transgressed to allow of any notice being taken of other less prominent, although by no means unimportant circumstances of the government of Hastings. It is not possible, however, to omit all mention of the beneficial encouragement and direction which he gave to the first attempts that were made by the English in

India to acquire an accurate knowledge of the people amongst whom they dwelt. Besides Committees appointed officially to institute investigations into the systems of revenue and law which had prevailed under the native governments, the servants of the Company were engaged, under his patronage, in deriving authentic information from native authorities. A code of Hindu law was compiled by the Pundits, and translated into English. The Hedaya or Mohammedan code was also translated, and the translation of the Ayin Akbari, the Institutes of Akber, was commenced under the patronage of Hastings. He also founded the Mohammedan College of Calcutta, expressly that competent expounders of Mohammedan law might be reared for the public service. Nor was his patronage restricted to the literature of Hindu or Mohammedan law. It was liberally granted to all literary undertakings. The Press was of his creation—the first types were cast, the first presses worked, by his authority and with his aid. The Bhagavat Gita was translated and printed—the translation of the Seir Mutakherin was commenced—the first grammar of the Bengali language was published. Names the most illustrious in the history of Indian Oriental literature, Halhed, Hamilton, Gladwin, Wilkins, Wilford, belong to this æra; and when Sir William Jones instituted the Asiatic Society of Bengal, he not only received the warm concurrence of Hastings, but found a body of Asiatic scholars ready to enlist under his banners, whom the patronage of the Governor-General had reared. Nor is the period of the government of Hastings less remarkable for talent in other departments, and many of the most distinguished of the Company's civil servants, Grant, Shore, Duncan, the two Colebrookes, Anderson, Harington, and others, of like reputation, were either his associates or his disciples.

Whether, therefore, we look to the origination of the systems which have prevailed in India since the days of Hastings, for the collection of the revenue or the distribution of justice—to the consolidation and durability of the political power of the Company, which he found feeble and tottering, and left impregnable—or to the liberal spirit of inquiry and zeal for the public service which he impressed indelibly upon the character of the Company's servants, it cannot be denied that his administration has infinite claims upon the gratitude of the Company, and if India be worth the having, upon the gratitude of Great Britain.

Were there then no imperfections, no errors, no faults, in the administration of Hastings? The answer to this is—he was a man. There were defects, no doubt, but there were no great crimes and misdemeanours to justify his impeachment. In his internal government there was profuse expenditure, and undue facilities were afforded to individuals to enrich themselves, by profitable contracts, at the public cost. Some of this, it may be admitted, arose out of the necessity which was imposed upon the Governor-General by the opposition he had to overcome both in India and in England, a necessity which he deeply lamented—of conciliating support—he did sometimes purchase 'friends' with the money of the state—his offence is not singular—and in his day, in particular, men were a very purchaseable commodity. He wanted them, and he bought them with the

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funds at his disposal—payment of a less coarse description may now be offered, but there is no reason to believe that the traffic has ceased. Some part of this profuse expenditure, however, may be also attributed to want of sufficient thrift, for it may be granted that Hastings was not, at all times, sufficiently careful of pecuniary outlay, whether it was on his own account or that of the state. The greatest portion of the extravagance however was unavoidable. In the utter want of organization, which the newness of all the public departments necessarily presented, there was no other mode of procuring supplies, except by the system of contracts. There were no officers in the employ of the Government who had either the time or the skill to conduct such duties themselves, and it was indispensable to have recourse to those who were stimulated to the attainment of the requisite qualifications by interested motives. The system survived Hastings long after the pleas by which it was vindicable, in his time, had lost their force, and it cannot in justice be made a ground of accusation against his government. As it affected his own conduct, although there was at times want of care and caution, there was no justifiable reason for charging him with being guilty of corruption. It was never attempted to be proved that he had, in any way, benefited by the advantageous contracts by which he secured opulence to others.

To the principles of his foreign policy no shadow of guilt can be attached. The safety and honour of British India were manifestly the motives of all his actions. Whether he was not at times less unrelenting than the occasion called for may admit of conjecture, but undoubtedly, the times were critical—great firmness was demanded—and its excess was a venial error, when its deficiency would have been an inexpiable crime.—W.

APPENDIX.

" *Report from the Committee of the House of Commons appointed (viz. on the 5th of March 1794) to inspect the Lords' Journals in relation to their Proceedings on the trial of Warren Hastings, Esq. and to report what they find therein to the House; which Committee were the Managers appointed to make good the Articles of Impeachment against the said Warren Hastings, Esq. and who were afterwards (viz. on the*

17*th of March*, 1794*) instructed to report the several matters which have occurred since the Commencement of the said Prosecution, and which have, in their Opinion, contributed to the Duration thereof to the present Time, with their Observations thereupon.*"

A SHORT account of the spirit of this document, and of the principal matters which it contains, is of high importance. It is a criticism not only upon this trial, but upon the law; a thing in this country, of great rarity, from a source of high authority. It would also be a thing of great utility, if it would show the people of the country, what they have been carefully disciplined not to believe, that no greater service can be rendered to the community than to expose the abuses of the law; without which the hope of its amendment is for ever excluded. The view is incomplete, and but superficial, which Mr. Burke, who was the author of the document, takes, even of that small portion of the mass of abuses, of which he had occasion to complain. He neither stretched his eye to the whole of the subject, nor did he carry its vision to the bottom. He was afraid. He was not a man to explore a new and dangerous path without associates. Edmund Burke lived upon applause—upon the applause of the men who were able to set a fashion; and the applause of such men was not to be hoped for by him, who should expose to the foundation the iniquities of the juridical system. In the case of public institutions, Mr. Burke had also worked himself into an artificial

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admiration of the bare fact of existence; especially ancient existence. Every thing was to be protected; not, because it was good, but, because it existed. Evil, to render itself an object of reverence in his eye, required only to be realized. Acutely sensible however to the spur of the occasion, he felt the abuses which crossed him in his path. These he has displayed with his usual felicity of language; and these it is of importance with respect to the imitative herd of mankind to have stamped with the seal of his reprobation.

I. Under the first head of the report, an analysis was given for the duration of the trial, and of the causes to which that duration was owing. At that time the trial had occupied, though six years, only 118 days. Of these it appeared that in speeches, opening, and summing up, the managers consumed nineteen days; that in speeches, opening, and summing up, and his own addresses, the defendant and his counsel had consumed twenty-two days. In documentary and oral evidence fifty-one days were employed by the managers; and twenty-three on the part of the defendant. But, as the managers brought forward the case, they were under the necessity of adducing almost all the documents which bore upon the facts, and to interrogate almost all the witnesses from whom, on either side, any information could be derived. A great part of this evidence the defendant, at the time of his defence, had only to apply. Lastly, and chiefly, the greater part of the long and harassing contentions about the admissibility of evidence, took place during the fifty-one days which

are set down to the account of the managers, but of which the greater part was consumed on account of the defendant.

"This last cause of the number of sitting-days," said the report, "your Committee considers as far more important than all the rest.

"The questions upon the admissibility of evidence, the manner in which these questions were stated, and were decided; the modes of proceeding; the great uncertainty of the principle upon which evidence in that Court is to be admitted or rejected; all these appear to your Committee materially to affect the constitution of the House of Peers as a court of judicature, as well as its powers, and the purposes it was intended to answer in the state.

"The conservation of all other parts of the law; the whole indeed of the rights and liberties of the subject, ultimately depends upon the preservation of the law of parliament in its original force and authority.

"Your Committee had reason to entertain apprehensions, that certain proceedings in this trial may possibly limit and weaken the means of carrying on any future impeachment of the Commons."

In the House of Commons, on the 11th of May, 1790, Mr. Burke affirmed, that the Lords sat on the trial in Westminster Hall not more than three hours a day on an average. Suppose in this statement some exaggeration; four hours is doubtless a large allowance. The number of hours, then, consumed in the trial, was 472. If the court had acted constantly, and ten hours a day (a well-constituted judicature, during the continuance of a trial, would

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not account ten hours an excess) the trial of Warren Hastings, which lasted eight years, and occupied 145 days, might with all the technical obstructions have been begun, carried through all its stages, and finished, in little more than sixty days, or about two calendar months. When the defendant, therefore, and his counsel, took advantage of the disgraceful catalogue of years, to cast odium upon the managers, they were the cause of injustice. It is worthy at the same time of being observed, that it was the length of the trial of which he affected so bitterly to complain, and the horrid expense with which law proceedings are in this country attended, which by converting suspicion, and, in many cases indignation, into pity, rendered the termination of the trial so favourable to Mr. Hastings; which, if his acquittal, from the lips of his judges, would at any time have been equally sure, rendered, most undoubtedly, his acquittal, at the great tribunal of public opinion, much more complete; and which was the sole cause of the gratuities with which he was afterwards treated.

II. The relation of the ordinary, the law judges, to the court of parliament, the committee remarked upon, as a thing of great importance to fix and to understand. They had found their interference peculiarly hostile to all those ends of justice which the technical rules of procedure are calculated to obstruct. It was, therefore, the committee declared, agreeable to them, to find, upon inquiry, that the judges were nothing but servants; "that they neither had, nor of right ought to have, a deliberative voice, either actually, or virtually, in the judgments

given in the High Court of Parliament;" and that their answers to questions are no further a guide to that court than it pleases to make them.

III. The committee set forward a principle which, in the capacity of managers, they had frequently urged in Westminster Hall; that the Lords were not bound by the Roman law, or that of any of the inferior courts in Westminster Hall; but only by the law of parliament. That they were not bound by the Roman, or English technical law, it might be very wise to maintain. But where was that law of parliament of which the committee spoke? It had no existence, any where; it was a mere fiction; spoken of, indeed, but never seen. This is one of those important facts, its ignorance of which exposed the mind of Mr. Burke to much of the perplexity, confusion, and embarrassment, which it experienced upon this subject; and to much of the weakness and inconsistency, of which the lawyers were disposed to take a prompt and unsparing advantage. It was one of the grand foundations, too, of that imperfection of the House of Lords, as a criminal tribunal, whence those evils resulted, with complaints of which the nation was filled.

IV. The committee were not satisfied with showing, that the formalities in pleading, rigidly demanded in the ordinary courts of law, had been explicitly and solemnly determined to be unnecessary before the Lords; they were bold enough to proceed further in condemnation of the courts below, and to offer reasons for showing that some at least of the formalities of these courts were hostile, not conducive, to substantial justice.

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It is necessary, for example, in an indictment, that a certain day be assigned for the commission of the fact. Yet on the trial it is sufficient to prove that it happened on any other day. In this, the committee said, there was "something insnaring; the defendant having *notice* to answer for only one day, when the prosecutor has his choice of a number of days." They made also the following important remark, that the practice of the ordinary courts of law in England, is distinguished by "extreme rigour and exactness in the *formal* part of the proceeding, and extreme laxity in the *substantial* part:" That is to say, it is a practice well calculated for sacrificing the substance of justice, under the screen of attention to its forms.

But here also Mr. Burke found himself weak; and so did his opponents find him: because he knew not the ground upon which he stood. He was afraid to do more than carp, as detached instances, at one or two formalities, which he had found, in the case before him, might be employed for the obstruction of justice. And the lawyers overwhelmed him with assumptions to which it was the habit of his mind to submit. Had he seen far enough into the subject, to be able to denounce every thing merely technical in judicial procedure, every thing which falls not under the description of a simple and rational instrument of simple and rational inquiry, as a contrivance set up to impede the course of justice, and existing only for pernicious ends; the lawyers would have found that they had nothing beside their commonplace fallacies by which they could oppose him.

V. On the question of *publicity*, the managers

spoke with the greatest emphasis. They divided the subject into two parts; that relating to the publicity of the judges' opinions; and that relating to publicity in general.

In taking the opinions of the judges in private, and defrauding the parties and the public of the benefit of their reasons, the committee complained, that the House of Lords had violated, at once, the obvious rules of natural justice, and the established law and usage of their own house. To show what was the law and usage of the High Court of Parliament a variety of precedents were adduced.

On the more general part of the question, it was the object of the committee to show, that the publicity of all the proceedings of the judges, and the statement of the reasons upon which all their determinations were founded, were so much the confirmed and undeviating practice in all other English courts of law, that "it seemed to be moulded in the essential frame and constitution of British judicature."

It was also their object to show, that this great principle was indispensably necessary, both for preserving the public liberties of the country, and for securing to the people the benefits of law.

"It was fortunate," they said, "for the constitution of this kingdom, that in the judicial proceedings in the case of Ship-money, the judges did not then venture to depart from the ancient course. They gave, and they argued, their judgment, in open court. Their reasons were publicly given; and the reasons assigned for their judgment took away all its authority."

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In regard to the benefits of law, they said; "To give judgment privately, is to put an end to Reports; and to put an end to Reports is to put an end to the law of England." This the committee made out, by showing, that in respect to law the people of England are in a most dreadful situation. For the greater part of that which they ought to possess in the state of precise and accurate law, they have nothing but notes, taken by any body, of what has been done, without any better kind of law, in this, and the other instance, in the several courts. It followed of course, that if you have no law, beside these notes, and yet destroy your notes, you destroy also the law. "Your Committee," said the report, "conceives, that the English jurisprudence has not any other sure foundation; nor consequently the lives and properties of the subject any secure hold; but in the maxims, rules, and principles, and juridical traditionary line of decisions, contained in the notes taken, and, from time to time, published, called Reports." After the word "published," the report says, "mostly under the sanction of the judges;" an expression that misleads, if it is understood to import any security taken by the judges, that they are correct: or even any knowledge the judges possess of what they are to contain.—Is not this a shocking account of a state of law yet existing in a civilized country? It is here also fit, to insert a protest which was entered in the Journals of the Lords, against the innovation of secret deliberation and despotical mandates—mandates purely despotical, because mere expressions of arbitrary will.

"DISSENTIENT. 1st. Because, by consulting the Judges out of court in the absence of the parties,

and with shut doors, we have deviated from the most approved, and almost uninterrupted, practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this High Court of Parliament should be open and exposed, like all other courts of justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

"2ndly. Because, from private opinions of the Judges, upon private statements, which the parties have neither heard nor seen, grounds of a decision will be obtained, which must inevitably affect the cause at issue at our bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the Judges to our private statement; and through the medium of our subsequent decision we transfer the effect of those opinions to the parties who have been deprived of the right and advantage of being heard, by such private, though unintended, transmutation of the point at issue.

"3rdly. Because the prisoners who may hereafter have the misfortune to stand at our bar will be deprived of that consolation which the Lord High Steward Nottingham conveyed to the prisoner, Lord Cornwallis, viz. 'That the Lords have that tender regard of a prisoner at the bar, that they will not suffer a case to be put in his absence, lest it should prejudice him by being wrong stated.'

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"4thly. Because unusual mystery and secrecy in our judicial proceedings must tend either to discredit the acquittal of the prisoner, or render the justice of his condemnation doubtful.

"(Signed) PORCHESTER,
SUFFOLK AND BERKSHIRE,
LOUGHBOROUGH."

VI. The committee next showed, by irresistible evidence, that the House of Lords, by the questions which they had transferred to the decision of the judges, had subverted the usage of parliament, violated some of the most important of the privileges of the Commons, betrayed and relinquished their own judicial trust, and broken down one of the strongest bulwarks of the constitution.

On all former occasions, the judges were consulted by the Lords, not on the individual circumstances of the individual cause; but on some general question, within which the circumstances of the individual case might fall, and the application of which to those circumstances the Lords reserved to themselves.

"In the present trial," says the report, "the judges appear to your Committee, not to have given their judgment on points of law, stated as such; but to have, in effect, tried the cause, in the whole course of it, with one instance to the contrary.—The Lords have stated no question of general law; no question on the construction of an act of parliament; no question concerning the practice of the courts below. They put the whole gross case, and matter in ques-

tion, with all its circumstances, to the judges. They have *for the first time*, demanded of them what particular person, paper, or document, ought, or ought not, to be produced before them, by the managers for the Commons of Great Britain.

So much for the innovation: Now for the consequences of it.

"This mode strikes, as we apprehend, at the vital privileges of the House. For, with a single exception, the case being stated, the questions are raised directly, specifically, and by name, on these privileges; that is, What evidence is it competent for the managers of the House of Commons to produce.—We conceive, that it was not proper, nor justified by a single precedent, to refer to the judges of the inferior courts any question, and still less for them to decide in their answer, of what is, or is not competent for the House of Commons, or for any committee acting under their authority, to do, or not to do, in any instance, or respect whatsoever. This new and unheard of course can have no other effect than to subject to the discretion of the judges the law of parliament and the privileges of the House of Commons, and in a great measure the judicial privileges of the Peers themselves; any intermeddling in which, on their part, we conceive to be a dangerous and unwarrantable assumption of power."

Such were the effects upon the privileges of the Lords, and the Commons. Let us next observe what they were upon objects of much greater importance.

"The operation of this method is, in substance, not only to make the judges masters of the whole

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"These essential innovations tend, as your Committee conceives, to make an entire alteration in the constitution and in the purposes of the High Court of Parliament, and even to reverse the ancient relations between the Lords and the Judges.

"It tends wholly to take away from the Commons the benefit of making good their case before the proper judges, and submits this high inquest to the inferior courts.

"Your Committee sees no reason why, on the same principles and precedents, the Lords may not terminate their proceedings, in this and in all future trials, by sending the whole body of evidence taken before them, in the shape of a special verdict, to the Judges, and may not demand of them whether they ought, on the whole matter, to acquit or condemn the prisoner: Nor can we discover any cause that should hinder them from deciding on the accumulative body of the evidence, as hitherto they have done in its parts, and from dictating the existence or non-existence of a misdemeanour or other crime in the prisoner, as they think fit,—without any more reference to principle or precedent of law, than hitherto they have thought proper to apply in determining on the several parcels of this cause.

"Your Committee apprehends that very serious inconveniences and mischiefs may hereafter arise from a practice in the House of Lords, of considering itself as unable to act without the judges of the inferior courts, of implicitly following their dictates, of adhering with a literal precision to the very

words of their responses, and putting them to decide on the competence of the managers for the Commons,—the competence of the evidence to be produced,—who are to be permitted to appear,—what questions are to be asked of witnesses, and indeed, parcel by parcel, of the whole of the gross case before them; as well as to determine upon the order, method, and process of every part of their proceedings. The judges of the inferior courts are by law rendered independent of the Crown. But this, instead of a benefit to the subject, would be a grievance, if no way was left of producing a responsibility. If the Lords cannot, or will not act without the Judges; and if (which God forbid!) the Commons should at any time find it hereafter necessary to impeach them before the Lords; this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of law, or admitting any proof of fact without them; and having once assumed the rule of proceeding and practice below as their rule, they must at every instance resort, for their means of judging, to the authority of those whom they are appointed to judge."

On the side of judicature, then, the people were left without a remedy. The Lords, by nullifying themselves, took away every legal check upon the iniquity of judges, because the judges could only be tried before the Lords, and to be tried before the Lords was to be tried by themselves.

For the departure from the ancient practice of framing a general question, within which the particular point in doubt was comprehended, to the new and extraordinary practice of sending the particular point itself to the judges, before whom the cause and

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its evidence was not brought, two possible causes are assignable. First; Talent, and the exercise of talent, were necessary to the framing of general questions; but talent was possibly scarce, and the labour of thought undoubtedly painful. Secondly; General rules, framed to embrace the particular instances, decided as they were by the judges, would, in many cases, not have borne to be expressed; their efficacy, in corrupting the administration of justice, would have been sufficiently visible, to excite the indignation of the world.

They would have been seen to be, what, by the committee, they were declared to be, "of a tendency to shut up for ever all the avenues to justice;" to operate as "a means of concealment;" "to render the process of judicature, not the terror, but the protection, of all the fraud and violence arising from the abuse of power;" and, united with "private, unargued judicial opinions, to introduce, by degrees, the miserable servitude which exists where the law is uncertain or unknown."

"*A miserable servitude exists wherever the law is uncertain or unknown.*" Such was the opinion, solemnly pronounced, on a very important occasion, by the assemblage of great men by whom this trial of Warren Hastings was conducted. Does any man dispute its truth and importance? After this acknowledgment, did the managers reflect how dreadfully uncertain law must be, in that country where it has nothing for its foundation, but the notes taken by casual individuals, of the incidents which happen in this and that individual case? Did they reflect, to how dreadful a degree law must be unknown, in that country, in which it is so voluminous and

obscure, that the longest life of the most ingenious lawyer, according to the lawyers themselves, is not sufficient to learn completely even one of its parts? Is it necessary to add, how great a portion of this *miserable servitude* is, therefore, the curse and the disgrace of the country, among the legislators of which these managers themselves were found?

VII. The committee made a dissertation of considerable value upon the rules of evidence, or rather the rules for exclusion of evidence. Even here, however, the author of the report saw his way but obscurely. He perceived distinctly, that every one of the rules of exclusion, which had been brought to bear against himself, was mischievous, and opposed to the course of justice in that particular application of it. But he did not ascend to the principle of exclusion itself; and perceive that generically it was pregnant with nothing but mischief. The mind of Mr. Burke was not a generalizing mind. It rested upon individual cases; had little native propensity to ascend any higher; and seldom did so, unless when impelled by unusual circumstances.

The Committee begin with stating to the House of Commons, and to the world, a most important fact. They had been informed, before the trial began, that use would be made of the rules of evidence to obstruct them. That is to say, the knowledge existed, and was capable of being turned to practical account, that the laws of evidence were useful to protect a criminal; because it was not yet known whether Hastings was criminal or not criminal; but it was perfectly known, it seems, that, in either case, the laws of evidence would be effectual to obstruct his prosecutors. And, happily, the

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power of obstructing justice, which English law thus puts into the hands of her professors, received a memorable and flagrant illustration, on the trial of Warren Hastings.

The committee first observe, that if the rules for excluding evidence were of advantage in questions which related to men of our own country, and to private transactions they were altogether inapplicable, in questions, which related "to a people separated from Great Britain by a very great part of the globe, separated by manners, by principles of religion, and by inveterate habits as strong as nature itself, still more than by the circumstance of local distance;" and questions which related to men, "who in the perpetration and concealment of offences, have had the advantage of all the means and powers given to government for the detection and punishment of guilt, and for the protection of the people."

The author of the report lays down the principle of evidence, with more than his usual comprehensiveness, in the following words: "Your committee conceives, that the trial of a cause is not in the arguments or disputations of the prosecutors and the counsel, but in the *evidence;* and that to *refuse* evidence, is to refuse to hear the cause: Nothing, therefore, but the most clear and weighty reasons ought to preclude its production." Yet, after laying down this important proposition, the author seems to have known little of its value; for he makes hardly any use of it, but goes immediately to challenge his adversary, on the score of precedent and practice; though he had made the committee expressly declare, that where not "founded on the

immutable principles of substantial justice, no practice, in any court, high or low, is proper, or fit to be maintained."

The committee proceeded to lay before the House and the world, the result of a careful research, which they professed to have made into the subject of *legal technicalities*, or "those supposed strict and inflexible rules of proceeding and of evidence, which appeared to them," as they affirmed, "destructive of all the means and ends of justice;" a declaration more firmly grounded than even they were aware; and of which their country has not yet been wise enough to profit.

They gave an account of the doctrine of evidence, as it had been manifested in the proceedings of the high court of parliament, as it existed in the civil or Roman, and as it existed in English law. The inference presented was, that on the trial of Mr. Hastings, the Lords, in the leading-strings of the judges, went beyond the law of parliament, beyond the civil, and beyond even the English law, in their rejections of evidence.

Reflecting upon the history of English law, which for a series of years had been relaxing the ceremonial of barbarous times, and always most rapidly in the hands of its most enlightened professors, the committee presented a most important historical and philosophical fact: That an overlaboured devotion to forms, at the expense of substance, is the bent of a rude age: and of a rude mind, in all ages.

The committee, having produced a number of the most remarkable instances they could find, in which the judges had violated the formalities of law in order to preserve the substance of justice, exhibited the

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following brilliant eulogium on the courts of law: "It is with great satisfaction your committee has found, that the reproach of *disgraceful subtleties*, of inferior rules of evidence which prevent the discovery of truth, of forms and modes of proceeding which stand in the way of that justice, the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the common law of England, or to the ordinary practice of the courts below."

This was to draw a general rule from the induction of a small and insufficient number of particulars, agreeably to the mental habit of Edmund Burke. He had exhibited a certain number of instances, in which the formalities of law had been made to yield to the claims of justice. He might have exhibited a much greater number, in which the claims of justice had been made to yield to the formalities of law. Mr. Burke seems to have been perfectly ignorant of a great and pervading principle of English law, which may be called *the principle of duplicity*. On occasions, so numerous as to extend over a great part of the whole field of law, English judges are provided with *two* grounds, on which they may erect their decisions; two *opposite* grounds, by means of which they may, upon the same question, make choice of any one of two opposite decisions which they please; and still be in the right. They may follow the rule of rational justice, and the genuine merits of the case, without regard to the formalities of law: In that instance, they are clothed with the praise of liberality. They may adhere to the formalities, and disregard the substance of the case: In that instance they are decorated with the praise of a zeal for the

law, for that steadiness and fixity in the rules of law on which the usefulness of them mainly depends. This power of deciding, either on one side or another, just as they please, is arbitrary power; and, as far as it extends, renders the Judges completely, and uncontrollably, despotic. They may do whatever they please. They may favour justice, if they have an inclination for justice. They may violate justice, if they have any end to serve by the violation. In the one case they are safe, on pretence of justice: in the other they are safe, on pretence of law.

VIII. After some general observations on the nature and importance of circumstantial evidence, the committee stated that the Lords had, on this occasion, pursued a course, not only unsupported by any practice of their predecessors, and in hostility with the practice of the Courts below; but a course which appeared to the committee "totally abhorrent from the genius of circumstantial evidence, and mischievously subversive of its use."

"As proof by circumstantial evidence rarely, if ever," says the report, "depends upon one fact only, but is collected from the number and accumulation of circumstances concurrent in one point; we do not find an instance until this trial of Warren Hastings, Esq., (which has produced many novelties) that attempts have been made by any court to call on the prosecutor for an account of the purpose for which he means to produce each particle of this circumstantial evidence, to take up the circumstances one by one, to prejudge the efficacy of each matter separately in proving the point; and thus to break to pieces and garble those facts, upon the

multitude of which, their combination, and the relation of all their component parts to each other, and to the culprit, the whole force and virtue of this evidence depends. To do any thing which can destroy this collective effect, is to deny circumstantial evidence."

The following was another pertinent remark. "Your committee cannot but express their surprise at the particular period of the present trial when the attempts to which we have alluded first began to be made. We did not find any serious resistance on this head, till we came to make good our charges of secret crimes; crimes of a class and description, in the proof of which all Judges of all countries have found it necessary to relax almost all their rules of competency; such crimes as peculation, pecuniary frauds, extortion, and bribery."

IX. The committee complained that the Lords had made it a ground of exclusion, if a question was put on the cross-examination, not on the examination in chief; or if an article of evidence was tendered on the reply, not in the first stage of the prosecution. They entered into a long argument to show, that this conduct, as it was unfavourable to the discovery of truth and correct decision; so it was unsupported by any thing in the law or practice of the courts.

X. The committee, last of all, commented upon the defence set up for this rejection of evidence; that it corresponded with the practice of the Judges in trying offences under commissions of oyer and terminer. They made a distinction between common jurymen, bound to give their verdict at one sitting, and the peers of parliament, possessing all the time

for deliberation which the case might require. They allowed, with flagrant inconsistency, that exclusion might be very wise and good, when it was common jurymen who were to decide upon the case; contended that it was very noxious when the Lords of Parliament were to decide; as if common jurymen were capable of deciding accurately and justly upon the merits of a case, with evidence not complete; the Lords of Parliament were not capable! As if the way to prevent ignorance from deciding wrong was to withhold information! As if a man with imperfect eyes were expected to find his way best in the dark! Assuredly, if an ignorant man is called upon to make a decision, the way to obtain a correct one is not to deprive him of information on the subject, but to give him all the information in your power, and instruct him, as completely as you can, what degree of influence each article of information intrinsically possesses towards proving the matter in dispute.

This unprecedented exposure of abuses in the law, and of the advantage made of those abuses, by the professors of the law, excited the highest indignation among those professors. Lord Thurlow, at the head of them in point of weight, and almost at the head of them also in impetuosity of temper, broke out, on an early occasion, with the flames which were kindled within his breast.

In a debate which took place in the House of Peers, on Thursday, May 22nd, on the bill for allowing government to take up and confine for a limited time persons suspected of treasonable or seditious practices, Lord Thurlow in his speech mentioned

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"a pamphlet which his Lordship said was published by one Debrett, in Piccadilly, and which had that day been put into his hands, reflecting highly upon the Judges and many Members of that House: it was disgraceful and indecent; such as he thought never ought to pass *unpunished.* He considered that vilifying and *misrepresenting* the conduct of Judges and Magistrates, intrusted with the administration of justice and the laws of the country, *was a crime* of a very heinous nature, most destructive in its consequences, because it tended to lower them in the opinion of those who ought to feel a proper reverence and respect for their high and important stations; and when it was stated to the ignorant and wicked, that their Judges and Magistrates were ignorant and corrupt, it tended to lessen their respect for, and obedience to, the laws of their country, because they were taught to think ill of those who administered them."[1]

We may here observe one of the most remarkable of the expedients of the lawyers. What they have laboured from an early date to create and establish in the minds of their countrymen is—a belief, that it

[1] Had the House of Lords prosecuted Debrett for a libel, they would only have followed the example set them by the House of Commons a few years before, in the course of this same trial. The charges found against Hastings were printed and sold. They were commented upon with considerable ability and some severity, by the Rev. Mr. Logan, one of the ministers of Leith, in Scotland. This review was published by a bookseller of the name of Stockdale, and upon the motion of the managers, an information was filed against him by the Attorney-General, for a libel on the Commons House of Parliament. The cause was heard in the Court of Kings' Bench in December, 1789. The occasion was rendered remarkable by the eloquence of Erskine, who defended Stockdale, and made a speech in his defence, which is considered as one of the most brilliant specimens of his oratory. Although only incidental to the subject, there are several passages in the speech which powerfully vindicate the conduct of Hastings.—See Erskine's speeches, vol. ii. 205.—W.

is criminal ever to express blame of them or their system. This endeavour has hardly been less diligent than it has been successful. The belief has grown into one of the most rooted principles in the minds of the more opulent classes of Englishmen. That it is one of the most pernicious prejudices is indisputable. For it is obvious, that it confers upon the lawyers, as far as it goes, a complete and absolute license to make the system of which they are the organs, and upon which all the happiness of society depends, as favourable to their own interests, at the expense of those of the community, as ever they please. It is, therefore, a belief artificially created by the lawyers, for the protection of their own abuses; and will never be allowed to retain a place in the mind of any enlightened and disinterested man. The grand remedy for the *defects* of government is, to let in upon them publicity and censure. There are no abuses in the exposure of which society is more interested than those of the law. There is no misconduct in the exposure of which it is more interested than that of the lawyers.

The first thing observable in the speech of this great lawyer is the *fiction*, under which he speaks of the report of a committee of the House of Commons. It was a *pamphlet* published by one Debrett. The regulations of parliament required, that notice should not be taken in one of the Houses, of any thing done in the other. The speech of the great lawyer, then, was a flagrant violation of that rule; for the whole purport of it was to arraign the *matter* of the writing, which was the production of the House of Commons, not the mere act of *publication*, in which

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alone Debrett was concerned. A rule that can be set aside by a fiction, that is, by a declaration more or less false, adapted to the purpose, is not a rule that is good for much, as it will never be in substance regarded when any one has a motive for breaking it.

The vindictive Judge here speaks of two things, *vilifying*, and *misrepresenting*. If he meant to say, that the report of the committee of the House of Commons had misrepresented any thing done by the Judges, of either of the two descriptions, concerned in the trial of Mr. Hastings; it is not true. He could not have mentioned a single fact which was not justly stated; nor a single censure, with respect to which, the fact against which it was pointed, and the reasons for which it was applied, were not both of them distinctly assigned. Nothing could be further from misrepresentation than this.

Further, the offended Judge speaks of *two* things, vilifying, and misrepresenting, as if they were one and the same thing; and thereby creates a deceitful and mischievous confusion. *Misrepresenting*, which is conveying a false conception of another man, is always bad. It may or it may not imply guilt, according to the state of the mind from which it issued. But all means should be employed both to prevent its existence, and to provide a remedy for its effects. *Vilification* is a very different thing; and is subject to very different laws. Vilification, as distinct from misrepresentation, is the conveying a true character of a bad man. The case is not easy to be conceived, in which that is not good for society. There can be no case, in which to publish the true character of a bad ruler is not good for society. There can be no case, in which to publish the true

character of a bad *Judge* is not pre-eminently beneficial to society.

Observe the sleight of hand, with which the artificer endeavours to pass his counterfeit coin. *Vilification,* and *misrepresentation,* are both spoken of, as the same thing. Misrepresentation is unquestionably bad; and vilification being shuffled in, under the same cover, is spoken of as bad also. And then comes the doctrine, delightful to the lawyer, that to speak with censure of the dignitaries of the law, on any occasion, or in any shape, is the height of criminality; and that "to reflect," as they call it, upon the Judges, that is, to make just remarks upon ill-behaviour, "ought never to pass *unpunished.*" It is very natural for Judges to preach punishment for all "reflection" upon Judges. But what is the consequence with respect to the unhappy community? To ensure to the Judges a power of gratifying and aggrandizing themselves at their expense; the power, in short, of making and keeping the law, an instrument, to any extent which they please, not of justice, but oppression.

Hear the plea of the lawyer, in behalf of his mischievous claim. To make known, says he, the offences of great men of the law would "diminish respect for, and obedience to the laws." That is say: When laws and the administration of them are made good, they will not be respected: When they are bad, if you only say nothing about their badness, and allow the lawyers to praise the badness as if it were goodness, you will then have perfect respect and obedience. Who but those who have rendered up their understandings to the will of the deceivers, can be-

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lieve this wretched misrepresentation of the human mind? It requires pains and trouble, cunningly and perseveringly applied, to make people in love with that which hurts them; leave them only to the operation of nature, and that which does them good will of itself engage their affections. If half the pains were taken to make the people see the excellence of good laws, that have been always taken to prevent them from seeing the wickedness of bad laws, an obedience such as the world has never yet beheld, and never can behold, till that righteous course is adopted, would be the consequence, ensured, with the certainty of the laws of nature.[1]

[1] What Mr. Burke said upon the subject of this attack deserves attention; though his strictures fall greatly short of the mark, because his mind was deluded by the fallacy—of respect for bad Judges, and bad laws. On the day after the speech of Lord Thurlow was delivered in the House of Lords, he thus addressed the House of Commons:

"The license of the present times makes it very difficult to talk upon certain subjects in which Parliamentary Order is involved. It is difficult to speak of them with regularity, or to be silent with dignity or wisdom. All our proceedings have been constantly published, according to the discretion and ability of individuals, with impunity, almost ever since I came into Parliament. By prescription people had obtained something like a right to this abuse. I do not justify it. The abuse is now grown so inveterate, that to punish it without a previous notice would have an appearance of hardship, if not injustice. These publications are frequently erroneous as well as irregular, but not always so: what they give as Reports and Resolutions of this House, have sometimes been fairly given.

"It has not been uncommon to attack the proceedings of the House itself, under colour of attacking these irregular publications; and the House, notwithstanding this colourable plea, has, in some instances, proceeded to punish the persons who have thus insulted it. When a complaint is made of a piratical edition of a work, the author admits that it is his work that is thus piratically published; and whoever attacks the work itself in these unauthorized publications, does not attack it less than if he had attacked it in an edition authorized by the writer,

"I understand, that in a place which I greatly respect, and by a person for whom I have likewise great respect, a pamphlet published by a Mr. Debrett has been very heavily censured. That pamphlet, I hear (for I have not read it), purports to be a Report made by one of your committees to this House. It has been censured (as I am told) by the person and in

the place I have mentioned, in very harsh and very unqualified terms. It has been said, and so far very truly, that at all times, and particularly at this time, it is necessary for the preservation of order and the execution of the law, that the characters and reputation of the Judges of the Courts in Westminster Hall should be kept in the highest degree of respect and reverence; and that in this pamphlet, described by the name of a Libel, the characters and conduct of those Judges upon a late occasion had been aspersed, as arising from ignorance or corruption.

"I think it impossible, combining all the circumstances, not to suppose that this speech does reflect upon a Report which, by an order of the committee on which I served, I had the honour of presenting to this House. For any thing improper in that report I am responsible, as well as the other members of the committee, to this House, and to this House only. The matters contained in it, and the observations upon them, are submitted to the wisdom of the House, that it may act upon both in the time and manner that to your judgment may seem most expedient, or that you may not act upon them at all, if you should think it most useful to the public good. Your committee has obeyed your orders; it has done its duty in making that Report. I am of opinion with the eminent person by whom that Report is censured, that it is necessary, at this time very particularly, to preserve the authority of the Judges. This, however, *does not depend upon us, but upon themselves.* It is necessary to preserve the dignity and respect of all the constitutional authorities. This, too, depends upon ourselves. It is necessary to preserve the respect due to the House of Lords: it is full as necessary to preserve the respect due to the House of Commons: upon which (whatever may be thought of us by some persons) *the weight and force of all other authorities within this kingdom essentially depend.* If the power of the House of Commons is degraded or enervated, no other can stand. We must be true to ourselves; we ought to animadvert upon any of our members who abuse the trust we place in them: we must support those who, without regard to consequences, perform their duty.

"For your committee of managers and for myself, I must say, that the Report was deliberately made, and does not, as I conceive, contain any very material error, or any undue or indecent reflection upon any person. It does not accuse the Judges of ignorance or corruption. Whatever it says, it does not say calumniously. This kind of language belongs to persons whose eloquence entitles them to a free use of epithets. The report states, that the Judges had given their opinions secretly, contrary to the almost uninterrupted tenor of Parliamentary usage on such occasions. It states that the opinions were given, not upon the *Law*, but upon the *Case*. It states that the mode of giving the opinions was *unprecedented, and contrary to the privileges of the House of Commons.* It states that the committee did not know *upon what rules and principles the Judges had decided upon those cases*, as they neither heard them, nor are they entered upon the Journals. It is very true, that we were and are extremely dissatisfied with those opinions, and the consequent determinations of the Lords; and we do not think such a mode of proceeding at all justified by the most numerous and the best precedents. None of these

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sentiments are the committee, as I conceive (and I full as little as any of them), disposed to retract or to soften in the smallest degree.

"The report speaks for itself. *Whenever an occasion shall be regularly given to maintain every thing of substance in that Paper, I shall be ready to meet the proudest name for ability, learning, or rank, that this kingdom contains, upon that subject.* Do I say this from any confidence in myself? Far from it! It is from my confidence in our cause, and in the ability, the learning, and the constitutional principles, which this House contains within itself, and which I hope it will ever contain; and in the assistance which it will not fail to afford to those who, with good intention, do their best to maintain the essential Privileges of the House, the ancient Law of Parliament, and the public Justice of the Kingdom." Hist. of Trial, part vii. p. 117, 118.

No reply or observation was made on the subject by any other member.—M.

It appears from Burke's correspondence with Dr. Laurence, that he at one time contemplated writing a History of the Trial, and that when he found his health and powers unequal to the task, he imposed it earnestly upon his friend. He retained to the last moments of his life a deep impression that his charges were just, and that his accusation of Hastings was the great glory of his life. Upon the subject of the acquittal of Hastings, he writes to Dr. Laurence—"Let not this cruel, daring, unexampled act of public corruption, guilt, and meanness, go down to posterity without its due animadversion. Let my endeavours to save the nation from that shame and guilt, be my monument, 'the only one I ever will have.' He was with some difficulty deterred from addressing a petition to the House of Commons, against the decision of the Lords, and was most indignant with the ministry for sanctioning the pension and the loan. At a subsequent period, in February, 1797, he exults over the loss of 44,000*l.* by Mrs. Hastings, in consequence of the failure of a Dutch house of business, and evidently concludes that this money had been invested in foreign securities, that it might be kept secret. It is, however, very nearly the sum accounted for as the accumulation of the marriage-settlement of Mrs. Hastings, in a letter from her husband to the Court in 1795. In the same letter he repeats his request, and takes a short review of his conduct, which is of exceeding interest, as a remarkable, although melancholy proof of the extraordinary manner in which virtuous feelings, uncontrolled by cautious judgment, and misdirected by imperfect knowledge, could mislead even so illustrious a man as Burke.

"The affair of Mrs. Hastings has something in it that might move a third Cato to a horse-laugh, though the means, I am afraid, by which she and her paramour have made that and all the sums which they have got by their own dishonesty, or lost by the dishonesty of others or the confusion of the times, [might cause] the laughing Democritus to weep as much as his opponent: but let whoever laugh or weep, nothing plaintive will let Mr. Pitt or Mr. Dundas blush for having rewarded the criminal whom they prosecuted, and sent me and nineteen members of Parliament to prosecute, for every mode of peculation and oppression, with a greater sum

of money than ever yet was paid to any one British subject, except the Duke of Marlbro', for the most acknowledged public services, and not to him if you take Blenheim, which was an expense and not a charge, out of the account. All this and ten times more will not hinder them from adding the Peerage, to make up the insufficiency of his pecuniary rewards. My illness, which came the more heavily and suddenly upon me by this flagitious act, whilst I was preparing a representation upon it, has hindered me, as you know, from doing justice to that act, to Mr. Hastings, to myself, to the House of Lords, to the House of Commons, and to the unhappy people of India, on that subject. It has made me leave the letters that I was writing to my Lord Chancellor and Mr. Dundas, as well as my petition to the House of Commons, unfinished. But you remember, likewise, that when I came hither at the beginning of last summer, I repeated to you that dying request which I now reiterate, That if at any time, without the danger of ruin to yourself, or over-distracting you from your professional and parliamentary duties, you can place in a short point of view, and support by the documents in print and writing which exist with me, or with Mr. Troward, or yourself, the general merits of this transaction, you will erect a cenotaph most grateful to my shade, and will clear my memory from that load, which the East India Company, King, Lords, and Commons, and in a manner the whole British Nation, (God forgive them!) have been pleased to lay as a monument upon my ashes. I am as conscious as any person can be of the little value of the good or evil opinion of mankind to the part of me that shall remain, but I believe it is of some moment not to leave the fame of an evil example, of the expenditure of fourteen years' labour, and of not less (taking the expense of the suit, and the costs paid to Mr. Hastings, and the parliamentary charges) than near 300,000*l.* This is a terrible example, and it is not acquittance at all to a public man, who, with all the means of undeceiving himself if he was wrong, has thus with such incredible pains both of himself and others, persevered in the persecution of innocence and merit. It is, I say, no excuse at all to urge in his apology, that he has had enthusiastic good intentions. In reality, you know that I am no enthusiast, but [according] to the powers that God has given me, a sober and reflecting man. I have not even the other very bad excuse, of acting from personal resentment, or from the sense of private injury—never having received any; nor can I plead ignorance, no man ever having taken more pains to be informed. Therefore *I* say, *Remember*." Correspondence, &c.

It is certain, however, notwithstanding this denial of enthusiasm, that enthusiastic zeal was at the bottom of all Burke's proceedings in this remarkable inveteracy towards Hastings, and that, as observed by an equally distinguished orator, "his prejudices on this occasion warped his judgment." "When strongly interested," Lord Brougham continues, "Burke was apt to regard things in false colours and distorted shape. The fate of society for many years hung upon Hastings's impeachment; during that period, he exhausted as much vituperation upon the East Indians in this country, as he afterwards did on the Jacobins; and he was not more ready to quarrel with Mr. Fox on a difference of opinion about France, than he had been a year before to attack Mr. Erskine with every weapon

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of personal and professional abuse, upon a slighter difference about the abating of the impeachment: nay, after the Hastings' question might have been supposed forgotten, or merged in the more recent controversy on French affairs, he deliberately enumerates among the causes of alarm at French principles, the prevalence of the East India interest in England; ranks 'Nabobs' with the diplomatic body all over Europe, as naturally and incurably Jacobin; and warns this country loudly and solemnly against suffering itself to be overthrown by a Bengal Junto." Statesmen of the Time of George 3rd., by Henry Lord Brougham, 163.—W.

CHAPTER III.

Arrangement about troops and money with the Nabob of Oude.—The Guntoor Circar obtained from the Nizam, and a new arrangement made with that Prince.—Aspect which that arrangement bore to Tippoo Saib.—Dispute of Tippoo with The Raja of Travancore.—Tippoo attacks the lines of Travancore.—The English prepare for war.—Form an alliance with the Nizam, and with the Mahrattas.—Plan of the campaign.—General Meadows takes possession of Coimbetore, and establishes a chain of depôts to the bottom of the Gujelhutty Pass.—Tippoo descends by the Gujelhutty Pass.—And compels the English General to return for the Defence of the Carnatic.—End of the Campaign, and arrival of Lord Cornwallis at Madras.—Operations in Malabar.—A new arrangement with Mohammed Ali, respecting the revenues of the Carnatic.

Lord Cornwallis took in his hand the reins of the Indian government in the month of September, 1786; and was guided by a pretty extensive code

of instructions, carried out from the joint manufacture of the Board of Control and the Court of Directors.

Of the two grand divisions into which the measures of this Governor-General are distinguished; those which regarded the interior management of the empire, and those which regarded its external relations; the one constitutes a subject distinct from the other; and we shall consult utility, by reserving the attempts which he made to improve the state of the government, till after the narrative is presented of the transactions which took place between him and the neighbouring powers.

The state of the connexion with the Nabob of Oude was the object which first solicited the attention of Lord Cornwallis. The preceding Governor-General and Council had pledged themselves to Mr. Hastings for the support of that arrangement which was one of the last measures of his administration. But no sooner had Lord Cornwallis arrived in India, than the Nabob proposed to come even in person to Calcutta, and pressed in the most earnest manner for leave to send Hyder Beg Khan his minister. The object was to represent as insupportable the weight of the burden which was still imposed upon his country: and to entreat that the temporary brigade, now called the Futtyghur brigade, should, agreeably to the contract which Mr. Hastings had formed, but which had never been observed, now be withdrawn.

To Lord Cornwallis, it appeared, however, by no means safe, to intrust the defence of the Nabob's dominions to the stipulated amount of the Company's troops, a single brigade at Cawnpore. In the minute which he recorded upon this occasion, he represented

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the discipline of the Nabob's own troops as too imperfect to be depended upon, even for the obedience of his subjects; who were retained in submission solely by their dread of the Company's arms: He described the character of the Nabob as a pure compound of negligence and profusion: And though, at that time, Oude was threatened with no particular danger; and the expense attending the continuance of the brigade at Futtyghur exceeded the sum which he was entitled to exact of the Nabob; he adhered to the resolution that the troops should not be removed.

In the pecuniary burden, however, he admitted some alteration. It appeared that, during the nine preceding years, the Nabob had paid to the Company, under different titles, at the rate of eighty-four lacs of rupees per annum; though by the treaty of 1775, he had bound himself to the annual payment of only 31,21,000, and by the treaty of 1781, to that of 34,20,000 rupees.

It was agreed that fifty lacs should be the annual payment of the Nabob; and that this should embrace every possible claim. The Governor-General declared that this was sufficient to indemnify the Company for all the expense which it was necessary for them to incur in consequence of their connexion with the Vizir. In other words, he declared that, for the nine preceding years, unjustifiable extortion, to the amount of thirty-four lacs per annum, had been practised on that dependent prince. The relation now established between the Nabob of Oude and the Honourable Company was described by the Governor-General in the following words: "We undertake the defence of his country: in return, he

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agrees to defray the real expenses incurred by an engagement of so much value to himself: and the internal administration of his affairs is left to his exclusive management."[1]

Among the instructions with which Lord Cornwallis was furnished for his government in India, he carried out with him explicit orders to demand from the Nizam the surrender of the circar of Guntoor. Bazalut Jung had died in 1782; but Nizam Ali retained possession of the circar; and the English had withheld the payment of the peshcush. Upon the arrival of Lord Cornwallis in India, he was deterred from obeying immediately the peremptory orders of his European masters, with regard to the surrender of Guntoor, on account of the advantage which it appeared that a dispute with the Nizam might lend to the ambition of Tippoo, and the apprehension which was entertained of a rupture with France. In the year 1788, however, the prospect of uninterrupted peace with France, the great addition to the English military strength expected in the course of the season, and the general position of the other powers in India, presented the appearance of as favourable an opportunity for making the demand, as any which was regarded as sufficiently probable to form a rational basis of action. Immediately after the return of Tippoo from the siege of Mangalore, and the conclusion of his treaty with the English in 1784, he set up against the Nizam a demand for Beejapore. About the same time a dispute arose between Tippoo and the Poona ministers, respecting a part of those acquisitions from the Mahratta ter-

[1] See Papers relating to the East Indies, printed by order of the House of Commons in 1806, No. 2. p. 1—14.

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ritory, which had been made by Hyder, during the Peshwaship of Ragoba. These circumstances, together with the jealousy, if not the fears, which the power and character of Tippoo inspired into these neighbouring chiefs, produced a connexion between them, in consequence of which a junction was formed between a Poona and Hyderabad army, in the beginning of the year 1786. The terms of reprobation in which Englishmen in India were accustomed to speak of the peace of 1784, led the Poona ministers, according to the opinion of Colonel Wilks, to expect that the English would take part in this confederacy against Mysore; and he is not well pleased with Lord Cornwallis, who lost no time in letting them know, that no project of an alliance, or any other measure of an aggressive nature, would be entertained by his nation. After a year of warring, attended by no considerable result, Tippoo and his enemies were both weary of the contest. A peace was concluded, on terms not very favourable to the Sultan, who was alarmed at the progressive accumulation of the instruments of war in the hands of the English; and desirous of an interval to settle his dominions on the coast of Malabar. In these circumstances, Lord Cornwallis was under no apprehension of a union between Tippoo and the Mahrattas: he thought it by no means probable, that, without the prospect of alliance with the French, he would provoke the dangers of an English war: and he concluded with some assurance that, with the support of Tippoo alone, the Nizam would not hazard the dangers of resistance. Still, though not probable, it was by no means impossible, that a connexion subsisted, or might in consequence of

this requisition be formed, between the Nizam and Tippoo; which, "no doubt," said the Governor-General, "would bring on a war, calamitous to the Carnatic, and distressing to the Company's affairs." Yet if ever the claim upon the Guntoor circar was to be enforced, the time was now arrived; and with regard to the result, should war ensue, it was, in the opinion of this ruler, impossible that for one moment a doubt could be entertained.[1]

The resolution being taken, the execution was skilfully planned. Captain Kennaway, a gentleman whose address was supposed well calculated to soften what might appear offensive in his commission, was sent to the court of the Nizam, instructed to employ conciliatory language, and to show the utmost liberality, in regard to every other point respecting which adjustment was required. No intimation was to be given to the Nizam of the proposed demand, till after the arrival of Captain Kennaway at his court. At the same time, instructions were sent to the Residents at the several durbars, of the Peshwa, Sindia, and the Raja of Berar, to give to these powers a full explanation of the proceeding, before intelligence of it could reach them from any other source. The government of Madras, under specious pretences, conveyed a body of troops to the neighbourhood of the circar; and held themselves in readiness to seize the territory before any other power could interpose, either with arms or remonstrance.

[1] Copy of a Letter from Earl Cornwallis to Sir Archibald Campbell, dated Calcutta, 30th of May, 1788. Ordered to be printed 1792. Wilks's Hist. Sketches, ii. 535—559; iii. 36.

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Captain Kennaway was yet on his journey to Hyderabad, when the following letter from the Governor-General, dated 3rd of July, 1788, went after him by despatch: "Sir—I have this instant received advice from Sir Archibald Campbell, that the Raja of Cherika has actually committed hostilities on the Company's possessions at Tellicherry by order from Tippoo. Sir Archibald appears likewise to be decidedly of opinion, that Tippoo will immediately attack the Raja of Travancore. This may, however, I think, be doubtful. Unless this alarm should be blown over, previous to your arrival at Hyderabad, of which you cannot fail of having certain information, you will of course recollect that part of your instructions, and, instead of declaring the real object of your mission, confine yourself to the general expressions of friendship, and assurances of our earnest desire to cultivate a good understanding between the two governments."

The situation of the Nizam was such, that he regarded himself as having more to hope, and less to apprehend, from a connexion with the English, than with either of the other powers which bordered upon his dominions. Greatly inferior to either the Mahrattas or Tippoo, he was ever in dread of being swallowed up by the one or the other of these formidable neighbours, and was no doubt protected from that destiny by the assistance which, in case of an attack from the one, he was more than likely to receive from the other. An alliance with the English, though disagreeable to both, would not, he concluded, be sufficient, with pretensions irreconcileable as theirs, to unite them for his destruction;

while the effect of it would be to lessen his dependence upon both. Under the influence of those views; possibly, too, attaching no great value to the possession of Guntoor, which, under the bad management of his renters, had yielded little revenue, the Nizam manifested an unexpected readiness to comply with the Company's demands; and, without even waiting for a decision upon the other points which were to be adjusted between them, he surrendered the circar in September, 1788. The settlement of the arrears of the peshcush, which the Company had forborne to pay; and the set-off which was constituted by the revenue of the Guntoor circar, from the time of the death of Bazalut Jung, occasioned some difficulty and delay. To remove these difficulties, but more with a view to prevail upon the Governor-General to form with him at least a defensive alliance, which would raise him above his fears from Tippoo and the Mahrattas, he sent his confidential minister to Calcutta. A few amicable conferences sufficed to produce an adjustment of the pecuniary claims. But with regard to the formation of new and more comprehensive ties between the two governments, the English ruler was restrained, by two powerful considerations. In the first place, they were forbidden by the act of parliament. And in the next place, they could not fail to excite the jealousy and displeasure of the Mahrattas, the friendship of whom he was desirous to cultivate.[1]

[1] "As his Highness's political situation with the Mahrattas has long approached almost to a state of dependence upon the Poonah government, we could make no alteration in the terms of our agreement with the

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The expedient, which suggested itself to the British Indian government, as happily calculated to answer all purposes, was, To profess the continued existence of the old treaty of 1768, in which both the Mysorean and Mahratta governments, as well as the English at home, had so long acquiesced; and to give to the clauses such an extent of meaning as would satisfy the inevitable demands of the Nizam. To the clause in that treaty, by which it was stipulated that English troops, to the amount of two battalions of sepoys, and six pieces of cannon, manned by Europeans, should be lent to the Nabob, were annexed the words, "whenever the necessity of the Company's affairs would permit." It was now agreed that these words[1] should mean, Whenever the Nizam should think proper to apply for them; under one limitation, that they should not be employed against the Company's allies, among whom were enumerated the Mahratta chiefs, the Nabobs of Oude and Arcot, and the Rajas of Travancore and Tanjore. Of the treaty of 1768, one memorable

Nizam, without its being construed by the Peshwa's Ministers as an attempt to detach him from them." Lett. Cornwallis to Secret Committee, 1st of November, 1789. We are informed by Colonel Wilks, that at the same time with this embassy to the English government, the Nizam sent one to Tippoo, to propose an alliance offensive and defensive; whether to supersede the agreement with the English, or as a further security, does not appear. Tippoo proposed the adjunct of a matrimonial connexion between the families; but this, not suiting the family pride of the Nizam, broke off the negotiation. Hist. Sketches, iii. 26, 36.

[1] The Governor-General imputes bad faith to those who inserted them as well as the clause relating to the grant of the Carnatic Balaghaut, and the consequent peshcush: "The sixth and twelfth articles are couched in terms which do not manifest a very sincere intention in the framers of the treaty to perform them." Minute of Governor-General, 10th of July, 1789.

article related to the transfer to the Company of the Carnatic Balaghaut; an article which, if the ancient treaty were binding, still continued in force. The propositions of the Nizam, that measures should now be taken for carrying this engagement into effect, the Governor-General was obliged to elude, by observing that the lapse of time by the alteration of circumstances, had not left that part of the agreement on the same foundation on which it originally stood; and that the English were bound in a treaty of peace with the prince whose territory it actually went to dismember; "but," said his Lordship, "should it hereafter happen that the Company should obtain possession of the country mentioned in these articles, with your Highness's assistance, they will strictly perform the stipulations in favour of your Highness and the Mahrattas."[1]

"The desire of not offending," says Sir John Malcolm, "against the letter of the act of parliament, would appear on this occasion to have led to a trespass on its spirit. Two treaties had been concluded, subsequently to the treaty of 1768, between Hyder Ali Khan and the British government: And the latter state had concluded a treaty of peace with his son Tippoo Sultaun in 1784; by which it had fully recognised his right of sovereignty to the territories which he possessed. And assuredly under such circumstances, the revival with any modification of an offensive alliance (for such the treaty of 1768 undoubtedly was) could not but alarm that Prince."

Sir John Malcolm proceeds; "Nor was that alarm

[1] Letter, Cornwallis to the Nizam, 7th of July, 1789.

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likely to be dispelled, by that qualification in the engagement which provided that no immediate operation should be undertaken against his dominions, as the expression by which that qualification was followed, showed, that the eventual execution of those articles, which went to divest him of his territories, was not deemed an improbable, or at least an impossible occurrence, by the contracting powers. Another part of this engagement which appeared calculated to excite apprehension in the mind of Tippoo was, the stipulation which regarded the employment of the subsidiary force granted to the Nizam; which was made discretional, with the exception of not acting against some specified Prince and chiefs, among whom he was not included."[1]

Sir John Malcolm wrote under the strongest impression of the hostile designs of Tippoo, and of the wisdom and virtue of Lord Cornwallis, yet he makes the following severe reflection, "that the liberal construction of the restrictions of the act of parliament had, upon this occasion, the effect of making the Governor-General pursue a course, which was, perhaps, not only questionable in point of faith; but which must have been more offensive to Tippoo Sultaun, and more calculated to produce a war with that Prince, than the avowed contract of a defensive

[1] Sir John says further, "that such ideas were entertained by Tippoo, from the moment he heard of the conclusion of this engagement, there cannot be a doubt. It would indeed appear by a letter from the Resident at Poonah, that the minister of that Court considered this engagement *as one of an offensive nature*, against Tippoo Sultaun." Sketch of Political India.—M. The work here referred to was published in 1811. It was subsequently enlarged and printed in 1826, as the Political History of India from 1784 to 1823.—W.

engagement, framed for the express and legitimate purpose of limiting his inordinate ambition."[1]

The Raja of Cherika was a petty prince on the Malabar coast, in whose territory was situated the Company's factory at Tellicherry. This prince, with his neighbours, had been subdued by Hyder Ali, and remained a tributary under Tippoo his son. A friendly connexion had long subsisted between the English and the Rajas of Cherika, whom the English were in the habit of accommodating with loans of money and military stores. In 1765, the debt had accumulated to a considerable sum; and the Raja assigned to the Company a territory called Rhandaterrah for security and payment. Among other transactions with the Raja, the English farmed of him, in 1761, the customs of the port of Tellicherry, for which they agreed to pay at the rate of 4200 rupees per annum. Since 1765, accounts had not been adjusted, but the Raja had received additional supplies both of money and stores. About the beginning of the year 1786, the Raja sent a body of men, drove away the English guard, consisting of a serjeant and eight or ten sepoys, and took possession of Rhandaterrah. The government of Bombay directed the chief and factors of Tellicherry to make out the Raja's account, whence it appeared that he was still to a large amount in debt to the Company; and to represent the outrage of which he had been guilty to his master

[1] Malcolm's Sketch, ut supra, p. 66—69. See the papers relative to this treaty, laid before parliament in 1792. To the same purpose, another enlightened Indian Soldier: "It is highly instructive to observe a statesman, justly extolled for moderate and pacific dispositions, thus indirectly violating a law, enacted for the enforcement of these virtues, by entering into a very intelligible offensive alliance." Wilks's Hist. Sketches, iii. 38.

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Tippoo; but not by force to attempt the recovery of Rhandaterrah, lest it should bring on a renewal of the war. The Raja, under frivolous pretences, evaded acknowledgment of the account; Tippoo returned for answer that he had commanded the district to be restored; the Raja disavowed the receipt of any such injunction; and produced a letter from Tippoo which merely commanded him to settle his accounts. The affair remained in suspense till 1788. Early in that year Tippoo descended the Ghauts, at the head of an army, for the ostensible purpose of taking cognizance of his dominions on the coast. Before his march from Calicut towards Palacatcherry on the 8th of May, he addressed a letter to the English chief at Tellicherry, stating it as the information of the Raja of Cherika, that he had paid his debt to the English, and was entitled to the restitution of his country: upon which the Sultan recommended a settlement of accounts. A letter was soon after received from the Raja, in which he stated the amount for twenty-seven years of rent due on the customs of the port, without making any mention of the much larger sums which the Company charged to his account; and he demanded the immediate payment of a lac of rupees. It was this which alarmed the Governor-General during the journey of his negotiator to Hyderabad; as the apprehension was, that the Raja was instigated by Tippoo; might proceed to hostilities; and involve the government in war.

The territory of the Raja of Travancore commences near the island of Vipeen, at the mouth of the Chinnamangalum river, about twenty miles to

the north of Cochin. From this point it extends to the southern extremity of India, bounded on the west by the sea, and on the east by the celebrated chain of mountains which terminate near the southern cape. The situation of this Prince made a connexion between him and the English of importance to both: He was placed at so great a distance, that he had little to apprehend from the encroachments of the Company: His country, which was only separated from their province of Tinivelly by the ridge of mountains, formed a barrier to the invasion of an enemy into that province, and through that province into the Carnatic itself: The support of the Company was necessary to preserve the Raja against the designs of such powerful and rapacious neighbours as Hyder Ali and his son: The productiveness of his dominions enabled him to contribute considerably to the military resources of the English: And, in the last war with Hyder, his co-operation had been sufficiently extensive, to entitle him to be inserted in the Treaty with Tippoo, under the character of an ally.

The descent of Tippoo, with an army, into the western country, filled the Raja with apprehensions. He was the only prey on that side of the Ghauts, opposite to the dominions of Tippoo, which remained undevoured; and the only obstruction to the extension of his dominions from the Mahratta frontier to Cape Comorin; an extension, attended with the highly-coveted advantage of placing him in contact with Tinivelly, the most distant, and most defenceless part of the English possessions in Coromandel. The occurrences which took place between Tippoo

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and the Raja of Cochin, added greatly to the terror and alarms of the King of Travancore.

There had been a period at which the Raja of Calicut, known by the name of the Zamorin, had endeavoured to subdue the Cochin Raja. At that time the Cochin Raja had received assistance from the Raja of Travancore. The Cochin Raja had continued to need support; and the predecessor of the reigning Prince had made over to his benefactor, the Raja of Travancore, under the title of compensation for expense, two small districts on the northern side of Travancore. Another motive may be supposed to have contributed to this territorial arrangement. Hyder Ali had at the time commenced his inroads on the coast of Malabar; and alarmed the Rajas for their safety. As a means of defence, the Raja of Travancore projected a great wall or barrier, on his northern frontier, to the formation of which the districts in question were of peculiar importance. Though part of the territory of the King of Cochin lay north of the projected line of defence, yet a considerable part, including his capital, was blended with Travancore on the opposite side, and would receive protection by it against the designs of Hyder, no less than the dominions of the Travancore Raja themselves. The works were constructed about twenty-five years previous to the period at which this narrative has arrived. They consisted of a ditch about sixteen feet broad and twenty deep, a strong bamboo hedge, a slight parapet, and good rampart, with bastions on rising grounds, which almost flanked one another. They commenced at the sea, on the island of Vipeen, and extended eastwards,

about thirty miles, to the Anamalaiah, or Elephant mountains, a part of the great Indian chain. On the north they were assailable only by regular approaches; but in the case of such an enemy as Tippoo, rather provoked attack, than afforded any permanent protection.

Some time after the erection of the lines, Hyder, who was extending his conquests over the Malabar Rajas, carried his arms against the territory of the King of Cochin, at least the part which was without the wall of Travancore; and the King, rather than lose that part of his dominions, consented to become the tributary of Hyder.

The Raja of Cochin waited upon Tippoo, in 1778, at Palacatcherry, whither he had proceeded after leaving Calicut. Upon his return, this Raja reported the substance of his conference with Tippoo to the Raja of Travancore. Tippoo questioned him why his visit had not been earlier; when something useful might have been effected; but now the rainy season was at hand. Tippoo asked, if the delay had been occasioned by the Raja of Travancore. He told the Raja that he should demand back those districts of Cochin, which had been given to the Raja of Travancore, and that he might receive the aid of the Mysore troops to enforce the claim. It was doubtful to the Raja of Travancore whether the report of the King of Cochin was deceitful or true; but it indicated in either case the hostile designs of Tippoo.

The Raja made known his fears to the government of Madras, and requested a company of sepoys, with an English officer, as a demonstration to the

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Sultan of the assistance which he might expect to receive. Sir Archibald Campbell, who then presided over the Councils of Madras, not only complied with the Raja's demand, but desired his permission to canton some battalions of the Company's troops, along the strong grounds behind the wall. For this service, two battalions of sepoys, with their proportion of artillery, were soon after sent from Bombay.

The arrival of the rainy season prevented active operations during the remainder of the year 1783, but in the month of May of the following year, Tippoo again descended to the coast, and began with summoning the fort of Cranganore. This, and another place, named Jaycotah,[1] belonged to the Dutch, and were maintained as a species of outwork to their grand settlement at Cochin. They were situated close upon the wall of Travancore, at its maritime extremity, and regarded by the Raja as of the utmost importance for the defence of the lines. He prepared himself to join with the Dutch in defending them; he represented to the English not only that Cranganore and Jaycotah were the very key to his country, but that he was bound in a defensive treaty with the Dutch; he therefore made earnest application to the English government to grant him that assistance which the present exigency appeared to require.

Mr. Hollond, who was now placed at the head of the Madras government, happened to be very pacifically inclined. He informed the Raja, that, except

[1] Written Ayacottah, by Col. Wilks.

for the immediate protection of his own dominions, he could not receive assistance from the English; and enjoined him, in a particular manner, to abstain from every act which could raise the jealousy of Tippoo, or afford him a pretext for invading Travancore.

Though Tippoo made several demonstrations, and went so far as to bring heavy guns from Palacatcherry, as if for the reduction of Cranganore, he retired before the middle of May, without commencing the attack; and placed his troops at Palacatcherry and Coimbetore. It was confidently expected, that he would return at the end of the monsoon; and that his first operations would be against the possessions of the Dutch. Were these in his hands, Travancore would be an easy conquest; and, in the opinion of the Company's Resident, it would even be difficult, if not impossible, for the English detachment to retreat.

In the mean time intelligence was received from the Commandant at Tellicherry, that, during the whole of the rains, that settlement had been environed by the troops of Tippoo, and shut up as in a state of rigorous blockade; that a chain of posts had been established surrounding the place, some of them so near, as to be within musket-shot of the lines; that his troops had strict orders, which they rigidly obeyed, to prevent the admission of every article of supply; that his boats were as vigilant for the same purpose by sea, as the troops were by land; and that the necessaries of life had, in consequence, risen to an exorbitant price.

The assurance, conveyed from the Company's

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governor at Madras, that the English would interfere in the defence of no territory but that which immediately belonged to the Raja himself, suggested to the Raja and the Dutch an expedient for realizing the condition on which was made to depend the assistance which they required. A negotiation, which was said to have been pending for two years, was concluded in the beginning of August, for rendering Cranganore and Jaycotah part of the dominions of the Raja; that is, by purchase from the Dutch. Of this transaction, however, the government of Madras disapproved; and they despatched a peremptory command to the Raja, that he should annul the contract, and restore the places to the Dutch.

Tippoo affirmed, that the Dutch had built the fort of Cranganore upon ground which belonged to his tributary and subject, the Raja of Cochin; that the Dutch had even paid rent for that ground, in the same manner as the ryots; and that the purchase and sale of it was the purchase and sale of a part of the kingdom of Mysore.

The Raja asserted the falsehood of the allegations of Tippoo; and remonstrated against the orders which he had received from Madras. The resident and he concurred in representing, and produced documents from the Dutch which proved; that Cochin was one of the early conquests of the Portuguese, and their capital in that part of India; that Cranganore and Jaycotah were their dependencies; that the Rajas of Cochin paid them tribute; that in the year 1654, the Dutch were at war with the Portuguese, and attacked their settlement of Cochin;

that they expelled the Portuguese entirely from that part of India, and seized their possessions; that they held no lands of the Raja of Cochin, whom they rather considered as dependent upon them; that the Raja of Cochin had not been a tributary of the Mysore chiefs for more than about twelve years; and considered himself as such for that territory only, for which he paid choute; the territory, namely, which was situated without the wall of Travancore.

On the 23rd of September the Governor-General made answer to the representations which had been transmitted to him by the Governor in Council of Madras: That, without a hope of assistance from the French, which Tippoo at this time could not entertain, he would not, it was probable, desire to draw upon himself the resentment of the Company; that Tippoo was aware, and had indeed been expressly informed, of the certainty with which an attack upon the Travancore Raja, included in the late treaty as an ally of the English, would be followed by war; that the character at the same time of that violent Prince rendered calculation upon his conduct from the rules of prudence somewhat precarious; and that provision should be made, not only for securing the dominions of the Company and their allies, but for obtaining ample satisfaction, in case of any injury which they might be made to sustain. He, therefore, directed that the best mode of assembling the army, and of opposing resistance to an enemy, should be concerted with the commanding officer; that from the moment Tippoo should invade any part of the territory of the Raja of

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Travancore or Nabob of Arcot, he should be considered as in a state of war; that all payments to the private creditors of the Nabob of Arcot should in that case be suspended; and that even the advances for providing the Company's investment should be withheld. It was well for Lord Cornwallis, that he possessed an influence, which enabled him to take such a license with impunity. The creditors of the Nabob were, as appeared by important consequences, favourites with the Board of Control. And a rich investment, which filled the coffers of the India House, was the principal source of delight to the Court of Directors. A man of less authority would not have dared to offer disappointment to such commanding inclinations. And perhaps it required the brilliant success which crowned the operations of Lord Cornwallis to exempt even his audacity from disagreeable consequences. The efforts made by Mr. Hastings, to prevent a failure in the article of investments, produced the principal errors of his administration, and the great misfortunes of his life.

The Governor-General concluded his letter with the following words; "We sincerely hope and believe that the case will not happen: but should the Carnatic unfortunately be involved in war, you may, in addition to all the means that are in your own power to command, be assured that this government will make the utmost exertions to give you effectual assistance, and to terminate, as speedily as possible, a contest that cannot, even if attended with the utmost success, prove advantageous to our affairs in this country."

In the representation first transmitted to Bengal, regarding the transfer of Jaycotah and Cranganore, it appeared as if they did belong to the dependant of Tippoo, and had been alienated without his consent. In this view of the circumstances Lord Cornwallis condemned the transaction; and confirmed the injunction which had been given by the government of Madras. When it was affirmed, that neither Tippoo, nor his tributary, had any title to the territory, that it had for centuries been the independent possession of Europeans, and more than a hundred years ago had been taken in lawful war from the Portuguese by the Dutch, he thought proper to suspend his decision. He directed that a proposition should be transmitted to Tippoo for a mutual appointment of commissioners to try the point in dispute; and proposed to agree that if the ground was proved to belong to the Raja of Cochin, the transfer should be annulled; if it was proved to belong to the Dutch, the transaction should be confirmed.

Towards the end of October the army of Tippoo was known to be encamped in the neighbourhood of Palgaut; and the Raja was confirmed in his expectation of an attack. On the 14th of December Tippoo arrived at a place about twenty-five miles distant from the boundary of Travancore, and the ravages of his cavalry were carried within a mile of the wall. On the following day a vakeel, a sort of character in which the capacities of the messenger and negotiator were compounded, arrived from the camp of the Sultan, bearing a letter to the Raja. It contained the annunciation of Tippoo's demands; that, as the Raja had given protection within his dominions to

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certain Rajas, and other refractory subjects of the Mysore government, he should deliver them up, and in future abstain from similar offences; 2. That as the Dutch had sold to him that which was not theirs to sell, he should withdraw his troops from Cranganore; 3. That he should demolish that part of his lines which crossed the terrritory of Cochin, because it belonged to the kingdom of Mysore. The Raja replied; 1. That the Rajas of whose protection the Sultan complained had obtained an asylum in his country, because they were his relations, at the distance of many years; that no objection to their residence had ever been taken before; that to prove his amicable disposition, they should nevertheless be removed; and that no refractory subject of the Mysore government had ever, with his knowledge, been harboured in Travancore; 2. That the fort and territory which he had purchased from the Dutch belonged to the Dutch, and was in no respect the property of the dependant of Tippoo; 3. That the ground on which he had erected his lines was ceded to him in full sovereignty by the Raja of Cochin before that Raja became tributary to the sovereign of Mysore; and that the lines, existing at the time when he was included in the late treaty between the English and the Sultan, were sanctioned by the silence of that important deed.

On the 24th of December Tippoo encamped at not more than four miles, distance from the lines; began to erect batteries on the 25th; early in the morning of the 29th turned by surprise the right flank of the lines, where no passage was supposed to exist; and introduced a portion of his army within

the wall. Before he could reach the gate which he intended to open, and at which he expected to admit the rest of his army, his troops were thrown into confusion by some slight resistance, and fled in disorder, with a heavy slaughter, across the ditch. Tippoo himself was present at the attack, and, not without personal danger, made his escape.

Intelligence of these events was received by the Supreme Government from Madras on the 26th of January; and on the morrow instructions were despatched to that Presidency. The Governor-General expressed his expectation that the Madras rulers had considered Tippoo as at war, from the first moment when they heard of the attack; that they had diligently executed the measures which he had formerly prescribed; and in particular, that all payments to the Nabob's creditors, and all disbursements on the score of investment, had immediately ceased. He added, that his intention was to employ all the resources which were within his reach "to exact a full reparation from Tippoo for this wanton and unprovoked violation of treaty;" that for this purpose endeavours should be employed to secure the assistance both of the Mahrattas and of the Nizam; that instructions should be despatched to the government of Bombay to attack his possessions on the coast of Malabar; and that in every part of India the army should be increased.

The instructions to the government of Madras were dated on the 27th of January; those to the Resident at the Court of the Nizam were dated on the 28th. The actual commencement of hostilities relieved Cornwallis from all restraint with regard

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to new connexions; and it was now his part to solicit from the Nizam an alliance, which, a few months before, that Prince would have received as the greatest of favours. The Resident was instructed to expose in the strongest colours the faithless and rapacious character of Tippoo; to raise in the minds of the Nizam and his ministers as high a conception as possible of the advantages of an intimate connexion with the English; to promise him a full participation in the fruits of victory, and a mutual guarantee of their respective dominions, against the ambition and hatred of Tippoo.

The chief difficulty in this negotiation arose from the violent apprehensions of the Nizam with respect to the Mahrattas. To such a degree was he impressed with an opinion of the villany of that nation, and of their determination to rob him of his dominions, whenever an opportunity should occur, that he desired the English Resident to inform him, if the Peshwa should invade his kingdom, while his army was absent, co-operating with the English, what measures, in that case, the English government would pursue: and he displayed intense reluctance to spare any portion of his forces from his own defence, without an article for the unlimited guarantee of his country. But the Governor-General, who was anxious for the alliance of the Mahrattas, and reckoned them "the people whose friendship was of far the greatest value,"[1] in the contest with Tippoo, was careful not to give

[1] Lett. Gov. Gen. to the Secret Committee, 1st Nov. 1789.

umbrage to the Poonah rulers, by appearing to raise a barrier against their ambitious designs.

The instructions to the Resident at Poonah were of the same description; and dated the preceding day. The relation with the Mahrattas, from the conclusion of the treaty of Salbhye had been that of general amity; which the Poonah government, with some eagerness and some address, had endeavoured to improve into an engagement for mutual protection against Tippoo. The restrictions however, imposed by act of parliament, had prevented the Governor-General from acceding to their desire; and of that policy he now expressed his opinion. "Some considerable advantages," he said, "have no doubt been experienced by the system of neutrality which the legislature required of the governments in this country: But it has, at the same time, been attended with the unavoidable inconvenience of our being constantly exposed to the necessity of commencing a war, without having previously received the assistance of efficient allies."[1]

The offer of a defensive alliance against Tippoo was now made to the Mahrattas; and they had the advantage of holding themselves up as the party who bestowed the favour, which, a twelvemonth before, they would have been well contented to appear as the party who received. The Indian desire, to make the most of every circumstance in a bargain, and to sell every favour at the highest price, made them higgle and wrangle for advan-

[1] Despatch to Mr. Malet, 28th Feb. 1790.

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tages, and protract the negotiation to a considerable length.[1]

A treaty, however, with the Nizam, and another with the Mahrattas, of which the conditions were nearly the same, were signed, the former on the 4th day of July, the latter on the 1st of June. A triple league was formed, to punish Tippoo for the treachery, of which he was declared to have been guilty to all the contracting parties: The Nizam and Peshwa bound themselves to prosecute vigorously the war with a potent and well-appointed army: The Peshwa received the option of being joined, during the war, by an English force equal to that which served with the Nizam: And the parties jointly engaged, never to make peace, except with mutual consent; to make an equal partition of conquests; and to resist and punish by their combined forces any injury to any of them which Tippoo thereafter might accomplish or attempt.

It was declared by the Governor-General to both the parties with whom he was endeavouring to contract, that the objects were four, at which he should aim by the war: To exact from the enemy indemnification for the expense or loss imposed upon the Company by the war: To make him restore to the Nizam and Peshwa, if they should take part in the conflict, whatever he or his father might have taken

[1] Captain Grant gives a different representation. According to him Nana Furnawees no sooner heard of Tippoo's attack on the lines of Travancore, than he made specific proposals to the Governor-General through Mr. Malet, in name both of his own master and of Nizam Ali, which with a few modifications were accepted. Hist. Mahr. It is not likely that the Mahratta Government would have made any difficulty as to an alliance against Tippoo with whom they were in a state of war.—W.

from those powers; To wrest from him all that he possessed of the Carnatic Payen Ghaut: And, in consequence of the barbarity which he had exercised on the Nairs of Malabar, to set them free from his dominion.[1]

The gratification of their resentment for the losses inflicted on them by Tippoo and his father; the removal of the terrors with which they were haunted by his ambition and power; the prospect of recovering what they had lost, and of elevating themselves upon his ruin, were powerful aids towards obtaining the alliance of the Nizam and Mahrattas.

While the mind of the Governor-General was thus intensely engaged in preparing the means of war upon the largest scale, a very different spirit prevailed at Madras; and, on the 8th of February, he despatched to that Presidency a letter of complaint and crimination. He charged the President and Council with neglect of duty, and disobedience of orders, in not having made the prescribed provision of draught cattle for the army; in not having suspended the business of the Company's investment;[2] and, after they had received an explicit declaration from the Governor-General in Council, of his determination to protect the Raja of Travancore in his purchase of Cranganore and Jaycotah if those places belonged not to the Raja of Cochin but the Dutch, in their having, in their correspondence with

[1] See the despatch to the Resident at Poonah, dated the 22nd of March.

[2] On the point of investment the Governor-General afterwards retracted his censure, as it was explained, that nothing more had been done than what was necessary to fulfil the contract with the Philippine Company.

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Tippoo and even with the Raja of Travancore and the English Resident in his camp, withheld that declaration, and thereby "discouraged a faithful ally in the defence of his country against an enemy, who was within a few miles of his frontiers, and with the insolence and violence of whose character they had long been fully acquainted."

To his early decision against the purchase of the two forts, Governor Hollond adhered: On the allegation of the Raja that Sir Archibald Campbell encouraged the purchase, he had replied;[1] "As you received early information of Governor Campbell's departure, it was not acting a friendly part to prosecute negotiations of so much importance without communicating their commencement and progress to me, upon my advising you of my succession to the government:" Even after the right of the Dutch appeared to be decidedly proved, still he maintained that the bargain was an offence against Tippoo, not to be justified by the law of nations: because with equal propriety might the Dutch make sale to the French of Sadras and Pulicate, within a few miles of Fort St. George: And lastly, he denied that the importance of the places in question was an adequate compensation for the evils of war.

To these reasonings the Governor-General made the following reply: "In your letter, dated 3rd of January, you thought proper to lay down principles, as being, in your opinion, founded on the law of nations, respecting the Raja and the Dutch, which militate against the spirit of our orders, and which we

[1] In his letter of the 16th of November.

conceive it was not regularly within your province to discuss, as you are not responsible for the measure directed."

In as far as the government of Madras acted upon their own notions of justice or policy in disobedience to the express orders of those whose commands they had undertaken to obey, they were guilty of a most serious offence; but in laying their opinions and reasons before the governing authority, they practised a virtue, from which the governing authority might derive essential advantage, and merited no insolence of reply.

To their reasonings, at the same time, very strong objections applied, In the two cases, that of Cranganore and Jaycotah, and that of Pulicate and Sadras, the circumstance which constituted the material part of the question, that, on which its decision, if founded on rational principles, would depend, was perfectly reversed. Pulicate and Sadras could not be held by the French, without essentially impairing the security of Madras: Cranganore and Jaycotah were of no importance to the security of Tippoo: and were evidently desired by him, as a means of aggression against the Raja of Travancore. With regard to the value of the places in question, the value, as it had at an early period been, by the Governor-General in Council, declared to the government of Madras, "could not, however great, be opposed to the serious consequences of war; but a tame submission to insult or injury, he was equally convinced, would, in its effects, prove the most fatal policy." This was the question, and the only question; not whether Cranganore and Jaycotah

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were a compensation for the consequences of war. Scarcely any single injury can ever approach to an equivalent for the expense, which is but a small part of the evils of war; and it is then only when there is a decided probability that the permission of one injury will draw on a second, and after the second, a third, and so on, that the advantages of war can be an equivalent for its evils, and recourse to it the dictate of wisdom. At the moment of action, this is often a question not easy to decide; because there is seldom a rule to guide, and the party who has power in his hand, is prone to over-rate the probabilities of that repetition of injury which forbearance may produce. Whether the forbearance of the English would, on the present occasion, have produced the repetition of injury, it is even now impossible with any assurance to pronounce. But the probabilities were so great, that either the decision of the Governor-General was right, or his error excusable.

After the repulse of Tippoo, on the 29th of December, from the rampart of Travancore, he disavowed the outrage; described it as the unauthorized act of his troops, who had been accidentally provoked to hostility by the people of the Raja; gave assurance that his affections were pacific, and that he had no intention to invade the ancient territories of Travancore; but he repeated his claims, on the score of protection afforded to his refractory subjects, the purchase of Cranganore and Jaycotah, and the erection of works upon the territory of his dependant, the Raja of Cochin.

The persuasion that peace might be preserved

with Tippoo, continued in the Madras government as long as Mr. Hollond remained at its head. On the 12th of February, having learned that General Medows, who commanded the Bombay army, was appointed to succeed him, he transmitted by letter to the Governor-General his intention of departing immediately for Europe; and omitted not the opportunity of repeating his conviction, that Tippoo "had no intention to break with the Company, and would be disposed to enter into negotiation for the adjustment of the points in dispute."

In a letter, dated on the 7th of February, in answer to the proposition respecting the examination by commissioners, Tippoo wrote, that since he had examined in person the foundation of the claims, there was nothing which remained for commissioners to perform; but if it were the wish of the English, they might send "one or two trusty persons to the presence, where, having arrived, they might settle the business;" that he wrote from regard to the ties of friendship which subsisted between him and the English, "otherwise the taking of the lines would not be a work of much difficulty or time."

To descend to the measure of sending commissioners to the presence of Tippoo, appeared to the Madras government to import a loss of dignity in the eyes of the Princes of Hindustan; and before intelligence of this proposition, the Governor-General had communicated his sentiments to General Medows, in the following words: "Good policy, as well as a regard to our reputation in this country, requires, that we should not only exact severe reparation from Tippoo: but also, that we should take

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this opportunity to reduce the power of a Prince, who avows upon every occasion so rancorous an enmity to our nation.—At present we have every prospect of aid from the country powers, whilst he can expect no assistance from France. And if he is suffered to retain his present importance, and to insult and bully all his neighbours, until the French are again in a condition to support him, it would almost certainly leave the seeds of a future dangerous war."[1] In the letter which made answer to that in which the proposal of Tippoo was transmitted to the Governor-General, a hope was expressed that the government of Madras had been exerting themselves to the utmost in the business of the war. They were told, that the attack on the lines of Travancore left no further room for deliberation; and that the Company's government could not with honour commence a negotiation with Tippoo, till he offered reparation for such an outrage, much less send commissioners to his presence. Instructed to make no relaxation, while answering his letters, in the vigour of their military operations; they were ordered to inform him, that Cranganore and Jaycotah belonged incontestably to the Dutch; that, as the lines of the Raja were in his possession at the period of the late treaty, his right was thereby recognised; and that the violation of them could not be regarded as accidental, since it was ascertained that the Sultan was upon the spot, and conducted the attack in person.[2]

[1] Letter dated 8th March, 1790.

[2] Letter to Gen. Medows, Governor in Council, dated 17th March, 1790. The papers laid before Parliament, relative to the commencement of this war, have furnished the materials of the preceding narrative.

On the 2nd of March, a skirmish happened, between the troops of the Sultan, and a party of the Raja's people sent to clear away a jungle which stood in front of the lines. On the 6th, Tippoo began to fire on the wall, and completed the erection of five batteries on the 10th. A considerable time was spent in making such an opening in the lines as appeared to him to make it expedient to venture the assault. At last, on the 7th of May, he advanced to the breach with his whole army; when the troops of the Raja were struck with apprehension, and fled in all directions. Having rendered himself master of the lines, he appeared immediately before Cranganore; of which he soon obtained possession. All the northern quarter of Travancore was now seized by the conqueror, who razed the lines, and spread desolation over the country. The necessity, however, of defending his own dominions soon recalled him from his prey. On the 24th of May, he hurried back to his capital, attended by a small body of troops.[1]

Though he had received a letter from General Medows, dated the 7th of April, declaring, that all his complaints against the Raja of Travancore were unfounded, that his first attack on the lines was a breach of the treaty, and together with his renewal

[1] Colonel Wilks says, "In plain fact he was unprepared for war." And yet the Colonel supposes, that "he had calculated on possessing every part of Travancore in December, 1789, when the option would have been in his hands of a sudden invasion of the southern provinces at once from Travancore, Dindigul, and Carour; and of being ready, by the time an English army could be assembled, to commence the war with the Caveri as his northern frontier towards Cotomandel." Hist. Sketches, iii. 65.

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of hostilities, left no room for deliberation, calling for action rather than words; he wrote again, under date the 22nd of May, professing his desire of amity, lamenting the misunderstandings which had occasioned the assemblage of the respective armies, and offering to send a person of dignity to Madras, who might give and receive explanations on the subjects of dispute, and "remove the dust by which the upright mind of the General had been obscured." To this, the following was the answer returned. "I received yours, and understand its contents. You are a great Prince, and, but for your cruelty to your prisoners, I should add an enlightened one. The English, equally incapable of offering an insult, as of submitting to one, have always looked upon war as declared, from the moment you attacked their ally, the King of Travancore. God does not always give the battle to the strong, nor the race to the swift, but generally success to those whose cause is just.—Upon that we depend."

For conducting the operations of the campaign, it was planned; that General Medows, with the principal part of the Carnatic army, should take possession of the Coimbetore country, and endeavour, through the Gujelhutty pass, to penetrate into the heart of Mysore; that General Abercromby, with the army of Bombay, should reduce the territory of Tippoo on the coast of Malabar, and effect a junction with Medows if events should render it desirable: and that Colonel Kelly should remain, for the security of the Carnatic, with a small army before the passes which led most directly from Mysore.

From the plain of Trichinopoly, where the army had assembled, the General marched on the 15th of June. It was of great importance that Coimbetore, formerly a Rajaship of considerable extent and opulence, should be occupied; both as depriving Tippoo of one principal source of his supplies; and as affording resources to the English army for the remainder of the campaign. It was also necessary, for the subsequent operations against Mysore, that a chain of posts should be established from the Coromandel coast to the foot of the pass; and Tanjore, Trichinopoly, Caroor, Erroad, and Sattimungul, were the places of which, for that purpose, selection was made. Having entered the enemy's country, and taken possession of Caroor, the General halted for eighteen days, while he collected provisions and formed a magazine. From Caroor he marched to Daraporam, which he took without opposition, and made a depot. Leaving there a considerable garrison, and all his superfluous baggage, he pushed on to the city of Coimbetore, which he found evacuated.

No enemy had as yet appeared, except some bodies of irregular cavalry, who had made attempts to harass the march. On the day after the army arrived at Coimbetore, the presence was announced of one of Tippoo's ablest captains, with 3000 horse, at the distance of about forty miles. A detachment was sent with directions to surprise them, but returned with only a few prisoners. At the same time, another detachment was employed in the capture of Erroad, which yielded after a trifling resistance.

Dindigul, and Palacatcherry, though not in the

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adopted line of communication, were fortresses of too much importance to be left with safety in the enemy's hands. A strong detachment, under Colonel Stuart, proceeded to the attack of Dindigul. The garrison was summoned, with a declaration, that, if they surrendered, private property should be respected; if they persisted in a fruitless defence, they should be all put to the sword. The Governor returned the summons by the messenger who brought it: "Inform your commander," said he, verbally, "that I cannot account to my master for the surrender of such a fort as Dindigul: If, therefore, a second messenger comes with a similar errand, I will blow him back again to his comrades, from one of my guns." Batteries were erected; and after a heavy cannonade of two days, an assault was projected on the following night. The breach was imperfect, but ammunition expended. The troops advanced to the attack with their usual gallantry, and made great and persevering efforts to penetrate. The strength, however, of the fortification was still so great, and the defence so vigorously maintained, that they were compelled to retire. It was matter of surprise to the assailants, to behold at day-break the flag of surrender displayed on the breach. The garrison, afraid to abide the effects of another assault, had deserted their commander during the night. The same detachment proceeded to the fort of Palacatcherry, which yielded after a short and feeble resistance. And Colonel Floyd was sent against Sattimungul, which he surprised and took without bloodshed.

The first important section of the operations of the campaign was thus completed with happy ex-

pedition and ease. The line of communication was established; an enemy's country was obtained for the supply of the troops; and nothing remained but to ascend the Gujelhutty pass, and make Tippoo contend for his throne in the centre of his dominions.

The army was at this time separated into three divisions of nearly equal strength; one with General Medows, whose head quarters were at Coimbetore; one with General Floyd, distant about sixty miles, at the advanced post of Sattimungul, near the bottom of the Gujelhutty pass; and the other with Colonel Stuart at Palacatcherry, about thirty miles in the rear; constituting between the advanced and ultimate positions of the army a distance of ninety miles.

On the 13th of September, in the morning, a reconnoitreing party, sent from the camp of Colonel Floyd, toward the mouth of the pass, was encountered by a body of the enemy; and after a little time the whole army of the Sultan commenced an attack upon the English detachment. The commander was able to choose a position which induced Tippoo to confine his operations to a distant cannonade; which he continued, however, during the whole of the day, and with considerable execution. The descent of Tippoo, by the very pass through which the English meant to ascend, has been represented as a perfect surprise, according to the usual want of intelligence in the English camp. Colonel Wilks, however, affirms, that Floyd had early intelligence of the movements of the Sultan; that he forwarded the intelligence to General Medows, with a suggestion,

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considering the dispersed situation of the army, of the propriety of falling back; that his intelligence was not credited; and that he had orders to remain.

A council of war having determined on retreat, the troops had crossed the river in basket boats, and were on the march next morning by eight o'clock, leaving the provisions collected in Sattimungul, and three pieces of cannon, behind. Tippoo found considerable difficulty in getting his army ready for pursuit, and marched at last with only a part of it. Two o'clock arrived before he could bring his infantry into action. He then meditated a decisive blow; but met with great obstructions from the strong hedges with which the ground was enclosed; and, being at last alarmed, by the report that General Medows was at hand, a report of which the English commander dexterously availed himself, he drew off, on the approach of night.

During the action, Colonel Floyd received a despatch, in which he was told that General Medows on the 14th would march for Velladi. This was not on the direct road from Coimbetore to Sattimungul, nor that in which Floyd was retreating, and from the place at which he had arrived, to Velladi, was twenty miles. The only chance, however, for saving the army, was, to force the junction. He began his march at two o'clock in the morning, and without seeing the enemy, reached Velladi at eight at night, when the troops had been without provisions, and literally fasting, for three days. The General had already passed ten miles in advance of Velladi. He was immediately apprized of the state of the detachment, and next morning retraced his

steps. The army then marched back to Coimbetore, where they were joined by the division of Colonel Stuart from Palacatcherry.

The Sultan, disappointed in his expectation of cutting off the dispersed divisions of the English army in detail, now turned his operations against the chain of their depôts. This is described by Colonel Wilks as very imperfect. "Caroor," he says, "could scarcely be deemed a good depôt; Erroad was better qualified to contain than protect stores; and Sattimungul was ill adapted to either purpose." Erroad, from which, in contemplation of what happened, the greater part of the garrison had been withdrawn, capitulated as soon as the enemy appeared: After emptying the storehouses of Erroad, the Sultan marched in a line directly south, and was followed by the English army, which left Coimbetore on the 29th of September, and in six marches arrived at Erroad. On the day on which the English left Erroad, the Sultan proposed to encamp in a situation about sixteen miles distant, whence he could march, either upon a convoy that was advancing from Caroor, or upon Daraporam, or upon Coimbetore, according to the direction which the English might take. The English army came up; and he increased his distance by a nocturnal march. General Medows waited to protect his convoy from Caroor: and the Sultan marched towards Coimbetore. He knew that the field hospital, valuable stores, and the battering train, were left with a very feeble garrison; but after performing a march in that direction, his intelligence, which never failed him, announced the important fact, that Colonel Hartley had just ascended from

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the Malabar coast, and reinforced Coimbetore. One point of his plan yet remained; he marched rapidly toward the south; found Daraporam miserably provided for defence; carried his approaches to the ditch; and on the 8th of October entered the place by capitulation.

The English General, alarmed by the danger which had threatened the loss of Coimbetore, returned in haste to that grand depôt; which he resolved to render as strong as circumstances would admit.

While he was employed in strengthening Coimbetore, an object of great importance engaged the attention of Tippoo. Colonel Kelly, the officer who commanded the corps of defence before the passes which led more immediately to the Carnatic from Mysore, died, and was succeeded by Colonel Maxwell, toward the end of September. On the 24th of October, in obedience to orders received from General Medows, this corps invaded Baramahl. Of this the Sultan was not long without intelligence. Leaving about one-fourth of his army to watch the motions of General Medows, he marched with the remainder in great haste toward Baramahl. On the 9th of November, several bodies of his light cavalry reached Colonel Maxwell's ground. On the 11th, the Colonel's cavalry, one regiment, allowed themselves, inveigled in pursuit in a defile, to be attacked by a great superiority of force, and were driven back with considerable loss. The Sultan appeared with his whole army on the 12th; and if he had not been baffled by the superior skill of Maxwell, who chose his ground, and made his dispositions, in such a

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manner, as allowed not the Sultan an opportunity of attacking him, except with the greatest disadvantage, this movement of Tippoo would have been celebrated as a specimen of generalship, not easy to be matched.[1]

After his operations for strengthening Coimbetore, General Medows put the army in motion, to look for the enemy in the direction of Erroad; which he approached on the 2nd of November. A strong corps, sent out under Colonel Floyd, to force an extensive reconnoissance, at last ascertained that the Sultan's whole army had crossed the river several days before, and gone to the northward. The English army crossed, not without difficulty; and began to follow on the 10th. On the 14th they encamped at the southern extremity of the pass of Tapoor. Next day they cleared the pass; and on reaching the ground intended for their encampment on the northern face of the hills, discovered the flags and tents of an army, on the plain, at about six miles' distance, below. Nearly three weeks had elapsed since they had direct intelligence from Colonel Maxwell: they had performed an anxious and laborious march; they hailed with delight the sight of their comrades, and the prospect of a speedy conjunction; and three signal guns were fired to announce their approach. It was the Sultan, who had so completely eluded their observation, and whom they now had in their view.

During three days he had endeavoured, with all

[1] A detailed account of these operations is given in a letter from Colonel Munro, then serving with the division under Maxwell. Life, i. 102.—W.

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his art, to obtain an opportunity of attacking Colonel Maxwell; and had withdrawn, the preceding evening, with a supposition that General Medows would require another day to clear the pass. He immediately removed to a greater distance up the Palicode valley; and General Medows proceeded fifteen miles next morning in the direction of Caveripatam; where the important junction with Maxwell was effected on the following day.

After the disruption of their chain of posts, and the defeat of their original plan for invading Mysore, it was not easy for the Sultan to divine what scheme of hostilities the English would afterwards pursue. Concluding, however, that whither he should go, they would follow, he resolved upon carrying the war into their own country, and in such a manner, if possible, as would afford him the means of recovering the places he had lost. Both armies intended to double back by the pass of Tapoor. Both armies arrived at the head of the pass at the same time. Yet the Sultan, only sending back his baggage, and rear guard, contrived to pass through before the English without loss: and never halted till he was opposite the weak but important depôt of Trichinopoly. The English General reached the banks of the Cavery, opposite Caroor, on the 27th of November, and was talking of a plan for calling Tippoo from the Carnatic, by ascending the Caveripatam pass, taking post at the head of the Gujelhutty, opening that of Tambercherry, and preserving his communication with Coimbetore, Palacatcherry, and the other coast, on the execution of which plan he expected to enter by the 8th of December; when he was summoned

to the defence of Trichinopoly, by intelligence of what the Sultan had performed.

The English General arrived at Trichinopoly on the 14th of December, where the swelling of the river had contributed to prevent the Sultan from effecting anything by surprise, and confined his mischief to the plunder of the island of Seringham. On the approach of the English army he proceeded with his usual devastations, latterly exchanged for contributions, northward, through the heart of Coromandel, and approached Tiagar. It was commanded by an officer, Captain Flint, who had already distinguished himself in the wars of the Carnatic and Mysore; and the efforts of Tippoo, who had no time for tedious operations, were defeated. He was more successful, however, at Trinomalee and Permacoil; from which he proceeded to the neighbourhood of Pondicherry, where he had some communication with the French governor, and engaged a French gentleman to go upon a mission for 6000 French troops to the King of France. The King of France, it is said, out of compunction, which he strongly expressed, for having aided the Americans in resisting the crown of England, declined compliance, and amused himself "with the shabby finery of Tippoo's presents to himself and the Queen."

The English army followed that of the Sultan as far as Trinomalee. Lord Cornwallis had arrived at Madras on the 12th of December, and directed General Medows to return to the Presidency. From Trinomalee, therefore, the army turned off to Arnee, where the guns and heavy stores were deposited under Colonel Musgrave, the second in

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command; and the remainder of the army reached the encampment at Vellout, eighteen miles from Madras, on the 27th of January.

On the Malabar side, Colonel Hartley was left, after the Madras troops were withdrawn, with one European regiment and two battalions of Sepoys. Happily the General left by Tippoo gave him the opportunity of a pitched battle on the 10th of December, and being routed escaped with the public treasure up the Tambercherry pass.

General Abercromby, the Governor of Bombay, had not been able to take the field till late in the season. He arrived at Tellicherry with a respectable force a few days preceding the battle of Hartley: and on the 14th, appeared before Cannanore, which after a very short resistance made an unconditional surrender. As the population was thoroughly disaffected to the government of Mysore, and none of the forts were strong, the task of the English army was little more than that of overrunning the country; and in the space of a few weeks every place which belonged to Tippoo in Malabar was subdued, and the whole province placed in possession of the English.[1]

During this campaign the Governor-General had been engaged in a transaction of considerable importance with the Nabob of Arcot. When Sir Archibald Campbell arrived at Madras, after the Carnatic revenues, which had been placed under British management by Lord Macartney, had been restored to the Nabob, one of the principal services

[1] For the facts of this campaign, Col. Wilks is undoubted authority; but for opinions, his partialities deserve to be watched.

which he was called upon to perform, was, that of effecting a new arrangement with the said master of those revenues. By the memorable arrangement of the Board of Control, the creditors of the Nabob were to receive annually twelve lacs of pagodas. The expense at which the President in Council estimated the peace establishment was twenty-one lacs. It was, therefore, his proposal, that the Nabob, the English Presidency, and the Raja of Tanjore, should each contribute to this expense, in exact proportion to the gross amount of their several and respective revenues. According to this principle, the contingent of the Nabob towards the peace establishment would have amounted to ten and a half lacs of pagodas. But upon a very pathetic remonstrance, setting forth his inability to sustain so vast a burden, the President was induced to admit an abatement of a lac and a half; and upon this agreement, of nine lacs to the state, and twelve to the creditors, an instrument, which they called a treaty, was signed on the 24th of February, 1787.

Such was the distribution of the revenues appointed for the period of peace. In the period of war, it was agreed that the parties should contribute four-fifths of their respective revenues to the exigencies of the State; the Nabob, however, being allowed to deduct, in the first instance, jaghires to a considerable amount for the maintenance of his family.

For punctuality of payment, it was arranged, that the following securities should be taken. In case of failure or delay in the contribution for the season of peace, certain districts were named, the aumildars and collectors of which were to make their payments,

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not to the Nabob, but to receivers appointed by the Company. For securing payment of the four-fifths of the revenues which were to be received by the Company in the season of war, the government of Madras might appoint one or more inspectors of accounts to examine the receipts of the districts; and on failure of payment, they might appoint receivers to obtain the money from the aumildars, in the same manner for the whole country, as had been stipulated in the case of certain districts, on failure of the payment of the subsidy during peace.

Sir Archibald took to himself a high degree of credit for this arrangement. In his letter to the Court of Directors in which he announced the completion of it, a letter bearing date the very day on which the treaty was signed, he first announces the pecuniary terms, and thus proceeds: "The care I have taken in securing to the Company the punctual payment of the several sums agreed upon, will be sufficiently illustrated by the treaty itself, which I have the honour to enclose. It is therefore only necessary to observe, that this, as well as all the other objects, recommended to me by the Court of Directors, have been minutely attended to in this treaty. The power of the purse and sword is now completely secured to the Company; without lessening the consequence of the Nabob: and I pledge myself that these powers, so long as I have the honour to preside in this government, will be exerted with discretion, and to the utmost of my abilities, to secure the interests, and promote the honour and prosperity, of the India Company. If the articles of this treaty appear satisfactory to you; if they

produce, as I trust they will, solid and lasting advantages to the India Company, by the very respectable addition of five lacs of pagodas to their annual receipts, while the Nabob of the Carnatic is happy and pleased with the arrangement, I shall think my labours well bestowed, and feel that I am fully rewarded for all the fatigue and anxiety of mind I have undergone, preparatory to, and during the whole of this negotiation, which I can with truth say has greatly exceeded any description that I can possibly convey."

Hardly was Sir Archibald more pleased with himself, than he was with the Nabob. "I should not." he says, "discharge my duty to the Honourable Company, were I not to recommend the present state of the Nabob's finances to your most serious consideration. The voluntary grant of so large a proportion of his revenues to the public and private creditors of his Highness, does, in my opinion, infinite honour, and marks his real character. But it ought to be considered, that this grant was made at a time when he thought his proportion for the defence of the Carnatic would not exceed the sum of four lacs of pagodas annually. His contribution for this defence is now extended to nine lacs; and I can easily perceive, that although he has cheerfully agreed to pay for that purpose five lacs of pagodas more than he expected, yet it is from a conviction that such a contribution is indispensable for the general security; and that this venerable Prince would rather subject himself and family to the feelings of difficulty and distress, than be thought backward for a single moment, in contributing most

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liberally to any arrangement which might tend effectually to the defence and prosperity of the Carnatic. I have narrowly watched the Nabob's conduct and sentiments since my arrival in this country, and I am ready to declare, that I do not think it possible that any Prince or person on earth can be more sincerely attached to the prosperity of the Honourable Company than his Highness, or that any one has a higher claim to their favour and liberality."[1]

Of this arrangement in general, the Directors expressed great approbation. Injustice, however, they remarked, had been done to the Raja of Tanjore, and undue favour shown to the Nabob, in one particular: For as the Raja paid an annual tribute to the Nabob, and this had not been deducted from the estimate of the Raja's revenues, and added to that of the revenues of the Nabob, a burden of 50,000 pagodas annually, more than his due, had thus been laid upon the one; a burden of 50,000 pagodas which he ought to bear, had been thus removed from the other. With regard to the abatement which, on the score of inability, had been allowed to the Nabob, in the proportional payments, the Directors expressed a wish, that the indulgence had rather been shown by diminishing the payments exacted for the creditors than by reducing the annual subsidy. They directed, accordingly, that the payment of ten lacs and a half on that account should still be required, together with the above-mentioned 50,000 pagodas which had been wrongfully charged to the Raja of Tanjore. The regular contingent of the Nabob was

[1] See a volume of papers, on this subject, ordered by the House of Commons to be printed on the 16th of March, 1792.

therefore established at the sum of eleven lacs; but, in consideration of his poverty, something less would be accepted for a few years.

Before the proposal for a new arrangement in conformity to these conditions of the Directors was communicated to the Nabob, his payments had, as usual, fallen in arrear; and in an answer to the importunities of Governor Hollond, he thus expressed himself: "The treaty that was entered into, in the government of Sir Archibald Campbell, I was induced to accede to, in the fullest hopes that I should obtain possession of Tanjore. I have exerted myself beyond my ability; and exercised every kind of hardship and oppression over the ryots, in collecting money to pay the Company; though in doing this I suffer all those pangs which a father feels when he is obliged to oppress and injure his own son. Such is the impoverished state of the country, that it is by no means equal to the burden; and I most sincerely and with great truth do declare, that I am necessitated to draw the very blood of my ryots to pay my present heavy instalment to the Company." He not only remonstrated with the utmost vehemence against the additional payments which the Directors commanded to be imposed upon him; but he earnestly prayed for relief, even from those which by the treaty with Sir Archibald Campbell he had engaged himself to sustain. Nor was it till a period subsequent to the arrival of General Medows, that his consent to the new burdens was obtained.[1]

While the Nabob was pressed on this important

[1] See a volume of papers, ut supra, p. 17, 19, and 50.

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subject, he had recourse to an expedient which succeeded so well when employed with Mr. Hastings. He lodged an accusation against the Governor of Madras: and sent a letter privately to the Governor-General through a subaltern in the Company's army. The grounds of the accusation the Governor-General directed to be examined by a Committee. In regard to the private letter and its bearer, he adopted a line of conduct differing widely from that which on a similar occasion had been pursued by Mr. Hastings. "If I had not," said he, in his answer to the Nabob "believed that the conduct of Lieutenant Cochrane proceeded only from inadvertency, I should have been highly displeased with him for presuming to undertake the delivery of a letter to me of such serious import from your Highness, without the knowledge or sanction of the Madras government; which I am sure, upon a little reflection, your Highness must agree with me, in thinking the only regular and proper channel of communication between us."[1]

When the war broke out, the demands of the English for money became more urgent; the backwardness of the Nabob in his payments continued the same. "After a most attentive consideration of the subject," say the president and Council of Madras, in their political letter dated the 16th of September, 1790, "we resolved to submit to the supreme government the correspondence which had taken place between our President and the Nabob; and to point out to his Lordship in Council the

[1] See a volume of papers, ut supra, p. 24.

impolicy of depending for our principal resources, at a time when the greatest exertions were necessary, and pecuniary supplies were of the utmost importance, upon the operations and management of the Nabob's government, of which the system was perhaps as defective and insufficient as any upon earth. And we did not hesitate to declare it as our unqualified opinion, that this government ought, during the war, to take the Nabob's country under their own management, as affording the only means by which the resources to be derived from it could be realized, and the fidelity and attachment of the polygars and tributaries secured, which is of the utmost importance to the successful operations of the war. In the event of his Lordship's agreeing with us in opinion, and instructing us to act in conformity, we submitted to him the necessity of our adopting the measure in so comprehensive a manner as to preclude any kind of interference on the part of the Nabob, while the country might be under our management; and stating that, if this were not done, the expected advantages could not be derived."

Instead of nine lacs, which it had been found impossible to make the Nabob pay during peace, four-fifths of his whole revenues were payable to the Company during war. But, whereas Sir Archibald Campbell had boasted to the Directors, that the arrangements, which he had made, "secured the punctual payment of the sums agreed upon;" the President and Council of Madras affirmed that they were totally inadequate to the securing of payment; and pointing out, what was a strange defect in prac-

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tical policy, "It might," they say, "have been expected, that the securities for the performance of the war stipulations, which are of such importance, would have been made stronger than those which are provided in the event of failures on the part of his Highness in time of peace: But they are, in fact, less efficient; and the process prescribed for failures in time of war is so tedious and complicated, that it can scarce be said to deserve the name of any security or provision whatever." "As to the appointment," they said, "of inspectors of accounts, provided for in the treaty of Sir Archibald Campbell, we think they are so little calculated to have any good effect, that we are not disposed to put the Company to expense on this account; being convinced that, in this country, no power, excepting the one which governs, can obtain a true state of Cutcherry accounts."[1]

The Governor-General lost no time in expressing his full conviction of the necessity of assuming the government of the country; but recommended that the acquiescence of the Nabob should, if possible, be obtained. The most vehement opposition which it was within the power of the Nabob to make, the Nabob on this occasion displayed. "We cannot say," replied the Madras Council, "that the event has surprised us;—for, when it is considered, how many people, attached to the Durbar, are interested in the Nabob's retaining the management of his country in his hands, it will not be a matter of wonder that every effort should be made to prevent his again

[1] Lett. to Gov. Gen. 1st May, and 7th June, 1790. See a volume of papers, ut supra, p. 91 and 102.

ceding what in a former instance he had much difficulty in recovering.—We are convinced he will never make a voluntary assignment of his country."[1]

On the 21st of June, the Supreme Government, declaring their "perfect persuasion of the impossibility of obtaining in future the stipulated proportion of the Nabob's revenues, through the medium of his own managers, which also precluded all hopes of being able, by those means, to recover the immense amount of his balance, authorized and directed the Governor and Council of Madras, to take effectual measures to put the Company into immediate possession of the management of his Highness's revenues and country; in order that the total amount of the collections might be applied with fidelity and economy, in the proportions that had been already settled, to defray the exigencies of the war, and to support his Highness's own family and dignity." Tanjore was included in the same arrangement.[2]

The Letter of the Governor-General and Council was continued in the following words: "We sincerely lament, that your endeavours to prevail upon the Nabob, by argument and persuasion, to sacrifice his ideas and private feelings, respecting his own personal dignity and importance, to the real and substantial good of his subjects—and for that purpose to make a voluntary surrender[3] to the Company of the

[1] Letter from the Presidency of Madras to the Gov. Gen. in Council, dated 7th June, 1790. Ibid. p. 103.

[2] Letter from the Gov. Gen. in Council, to the Gov. in Council of Fort St. George. Ibid. p. 114.

[3] "For the real and substantial good of his subjects make a voluntary surrender" of his sovereignty! The Governor-General and his Council could not be simple enough to expect it. Where would he have found

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management of his country, during the continuance of the present war, have proved so fruitless and ineffectual. We trust, however, that before long, his Highness will be fully sensible of the interested and criminal motives of the advisers, by whom he has been influenced to resist your solicitations; and that he will soon see, that, whilst his people will be treated with justice and humanity, a liberal fund will be secured for the maintenauce of his own family and dignity, and that the remainder of the revenues will be secured from the hands of extortioners and usurers, and honourably applied to the defence and protection of his subjects and dominions."[1]

In reporting upon these transactions to the Court of Directors, the Governor-General drew a picture of the government and circumstances of the Nabob, which is too material to this part of the history, not

a prince, in much more civilized countries, capable of that sacrifice?—"We trust that before long his Highness will be fully sensible of the interested and criminal motives of his advisers." What prince is without such interested and criminal advisers? And what can be expected from the advisers of any prince—advisers who, as long as they have the wielding of his power, how destructive soever to the community, gain by its magnitude; would lose by its diminution?—"While his people will be treated with justice and humanity, a liberal fund will be secured for his own family and dignity." If every prince, upon the securing of a liberal fund for his family and dignity, would consent to lose all that portion of his power which obstructs the exercise of humanity and justice to his people, what a different world should we speedily behold! That the doctrine, however, of Lord Cornwallis, so earnestly preached to this Indian prince, and recommended to his acceptance by more effectual means, when preaching would not suffice, was a doctrine which ought to be recommended to princes, few will dispute. But history provides for a just judgment upon Mohammed Ali, and his advisers; who certainly deserve no *peculiar* measure of disapprobation for preferring the existence to the annihilation of his power, notwithstanding the claims of humanity and justice, which I fully admit, with respect to his people.

[1] Letter, ut supra, ibid. p. 117.

to be inserted in its original shape. "I was impelled," says he, "to the determination of assuming the revenues of the Carnatic, by the strongest considerations of humanity, justice, and public necessity. The flagrant failure, on the part of the Nabob, in the performance of the stipulations of the treaty with the Company, ought long ago to have awakened the government of Fort St. George to a sense of their public duty; and would, in strictness, at any time, have merited the serious interference of this government. But, at a dangerous juncture, when the resources of Bengal are totally inadequate alone to support the expense of the war into which we have been forced, by one of the most inveterate enemies of his Highness's family, and of the British name, I could not for a moment hesitate in discharging what clearly appeared to me to be the duty of my station—by taking the only measures that could be effectual for securing the proportional assistance, to which we are entitled, from the funds of the Carnatic.—I must likewise observe, that, by executing this resolution, I have every reason to believe, that whilst we provide for the general safety, we, at the same time, greatly promote the interests of humanity. For, by the concurrent accounts that I have received from many quarters, I am perfectly convinced, that, from the Nabob's being unacquainted with the details of business, and, either from an indifference to the distresses of his subjects, or from a total incapacity to superintend and control the conduct of his renters and managers, the most insatiable extortions, and cruel oppressions, are no where in India more openly and generally committed, with impunity,

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upon the mass of the miserable inhabitants, than by his Highness's officers in the internal management of his country. And it will, therefore, not only be felt as a relief, by the body of the people, to be put under the authority of the Company's servants; but we shall probably be able, by mild and just treatment, to conciliate, on this critical occasion, the attachment of the southern Polygars, who, from being harassed by the unreasonable exactions of the Nabob's renters, have almost always been ripe for disturbance and revolt. I trust, likewise, that, in addition to the other advantages that may be expected from the measure of taking the management of the Carnatic into your own hands, it may tend to break off a connexion between the Durbar and many of your servants—from which nothing but the most baneful effects can result, both to your own and his Highness's interests.—The relation between his Highness and the Company's government; the delusive schemes, into which he has at different times been drawn by the acts of intriguing and interested men, to seek for support in England, against regulations and orders, no less calculated for *his* real good, than for the advantage of the Company; and the ease which Europeans of all descriptions have found, by the vicinity of his residence to Madras, in carrying on an intercourse with him, in defiance of all your prohibitions, have thrown out temptations that have proved irresistible to several of your servants and other persons, not only recently, but during a long period of years, to engage in unjustifiable and usurious transactions with the Durbar. And I believe I may venture to assure you, that it is to these

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causes, so highly injurious to the Company's interests, and so disgraceful to the national character,[1] that the present state of disorder and ruin, in his Highness's affairs, is principally to be attributed.—It will require much mature consideration to devise means that will be effectual to prevent a repetition of these evils; and, indeed, I must freely own, that I

[1] *English virtue*—his Lordship is not restrained by the common cry, that an Englishman should never speak of *English virtue* except with praise, from pointing out where English *want of virtue* has been productive of undesirable effects. "I am sensible," says he, "that many individuals, conceiving that they are actuated by the best of motives, will differ with me in the sentiments which I have taken the liberty to offer upon this subject, and I cannot be confident that they will meet with a favourable reception from the nation at large.—The Nabob's age, his long connexion with us, his rights to the possession of the country; and exaggerated accounts of his former services, may furnish topics for popular declamation, and may possibly engage the nation, upon mistaken ideas of humanity, to support a system of cruelty and oppression. But whilst I feel conscious that I am endeavouring to promote the happiness of mankind and the good of my country, I shall give very little weight to such considerations: And should conceive, that I had not performed the duty of the high and responsible office in which you did me the honour to place me, if I did not declare—That the present mixed government cannot prosper; even in the best hands in which your part of it can be placed: And that, unless some such plan as that which I have proposed, should be adopted, the inhabitants of the Carnatic must continue to be wretched; the Nabob must remain an indigent bankrupt; and his country an useless and expensive burden to the Company and to the nation." Ibid. p. 58.—M.

Although it is no doubt true that the cause of the Nabob of Arcot was not unfrequently advocated from motives of self-interest, yet it is unjust to ascribe his defence in every case, to want of virtue in his defenders. Many persons of integrity were at all times ready to take part with him, in consideration of what they conscientiously believed to be his hereditary rights, and his attachment to the English. They were not well apprized of his real situation, and regarded the control which the Madras Government sought to maintain, as usurpation and insult. They believed also in his having considerable power, which he might exercise to the disadvantage of the British, and they therefore questioned the policy of exciting his displeasure. These considerations operated even with superior minds in his behalf, and procured him unpaid friends and partisans both in India and in England.—W.

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could not venture to propose any plan, on the success of which I could have a firm reliance, unless the Nabob could be induced, by a large annual revenue, to surrender the management of his country for a long term of years to the Company."[1]

For the details of management, the same regulations were adopted which had been devised by Lord Macartney; and the highest testimony was now borne to the wisdom of the plan which he established, and which the Board of Control had overturned. General Medows, as early as the 31st of March, was not restrained from declaring, in his letter of that date to the Court of Directors, "His Highness, the Nabob, is so backward in his payments, and oppressive to his Polygars, whom at this time it is so necessary to have on our side, that I conceive it will be absolutely necessary, upon his first material delay of payment, to take the management of his country into your own hands; a measure, in spite of the opposition made to it, so advantageous to you, the country, and even his Highness himself, when so wisely projected, and ably executed, by Lord Macartney."[2]

This important arrangement was followed by the complete approbation of the Directors,[3] who expressed themselves, even upon the first assignment, procured by Lord Macartney, in the following terms: "If the absolute necessity of recurring to the measure in question were not, in our opinion, to be completely justified upon its own merits, we might recall to our

[1] Letter from Lord Cornwallis to the Court of Directors, dated 10th August, 1790. Ibid. p. 57, 58.

[2] Ibid. p. 55.

[3] See the vol. of papers on the subject, ordered to be printed by the House of Commons, on the 2nd of April, 1792, p. 5.

recollection the circumstances of a former period. At the commencement of the preceding war, the Nabob agreed to appropriate the whole of his revenues for its support, and the Company appointed superintendents, or receivers, to collect and receive all the rents, &c. from the Nabob's aumildars. But, whether it arose from the bad system of management in general, or from this double system in particular; or whether there was a predominant influence in the Nabob's Durbar, inimical to the interests of the Company—all of which were repeatedly suggested—the measure did not afford any relief to the Company's finances in the prosecution of the war. Nor, till the country was absolutely made over by a deed of assignment, in December, 1781, did the Company receive a thousand pagodas into their treasure."[1]

Not in exact conformity with the character which had been given of him by Sir Archibald Campbell, the Nabob now practised all the arts which, in the case of Lord Macartney, had been employed to defeat the purposes of the assignment. This time, however, they were practised with inferior success, because they were not, as when employed against Lord Macartney, supported by the superior powers. Even in this case, the Nabob had the boldness to circulate instructions to his aumils, or revenue agents in the country, calculated to prevent co-operation with the English government. The remarks of the Directors upon these proceedings of his are necessary to be known. "Having signified our approbation of the

[1] Court's Political Letter to Fort St. George, dated 6th May, 1791.

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determination of the Bengal government, authorizing you to assume the management of the Nabob's revenues during the continuance of the war, and which seems to have been carried into effect with as much delicacy towards the Nabob, as a circumstance so totally against his inclination would admit of; we are sorry to remark on the nature and tendency of the Nabob's orders to his aumildars. Surely his Highness must have forgot, for a moment, the nature of his connexion with the Company: and that he is entirely indebted to their support for the preservation of his country. If the Nabob's professions and actions had not been very much at variance, with what reason could Lieutenant Boisdaun, commanding at Nellore, complain, that the Nabob's managers seemed rather the enemies of the detachment than their friends. We likewise have the mortification to find that his Highness's phousdar and aumildar, at Nellore, absolutely refused to submit to the Company's authority; a resistance, which, say the Board of Revenue, might be expected from the nature of the Nabob's circular orders. We find also that the collector at Trichinopoly was encountering many difficulties, in establishing the Company's authority in the different districts, from the opposition of an armed force; and that so very industrious have the Nabob's sons been in throwing obstacles in the way, that not an account was to be found in any of the village Cutcheries, nor any public servant who could give the smallest information; and that they have been particularly active in disposing of all the grain in the country. We likewise observe, in the intelligence from Tanjore, that the Raja had been recently

alienating several villages, and that the repairs of tanks and water-courses had been neglected, that the Company's collectors might not be able to produce much income. Such friends and allies can be looked upon as little better than open and declared enemies. And such a conduct on their part is an ill return for the protection that has been constantly afforded them by the British nation."[1]

The opposition which the English encountered on the part of the people themselves, was naturally created by the course which the English pursued. They professed, that they were to retain the government of the country, only during the war. After one or two years, the business and the power would again be consigned to the Nabob; when those who during that interval had acted agreeably to his inclinations would be favoured; those who had conformed to the inclinations of the English would be oppressed. The English collections, therefore, continued far below the amount to which a permanent arrangement might have been expected to bring them.

Hypocrisy was the cause which produced the difficulties resulting to the English from their connexion with the Nabob. They desired to hold him up to the world, as an independent Prince, their ally, when it was necessary they should act as his lord and master. If they succeeded in persuading no other person that he was an independent Prince, they succeeded in persuading himself. And very naturally, on every occasion, he opposed the most strenuous re-

[1] Court's Political Letter to Fort St. George, dated 6th May, 1791.

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sistance to every scheme of theirs, which had the appearance of invading his authority. If the defence of the country rested with the English; and if they found that to govern it through the agency of the Nabob deprived them of its resources, and above all inflicted the most grievous oppression upon the inhabitants; results, the whole of which might have been easily foreseen, without waiting for the bitter fruits of a long experience; they ought from the beginning, if the real substance, not the false colours of the case, are taken for the ground of our decision, to have made the Nabob in appearance, what he had always been in reality, a pensioner of the Company. What may be said in defence of the Company is, that parliament scanned their actions with so much ignorance, as to make them often afraid to pursue their own views of utility, and rather take another course, which would save them from the hostile operation of vulgar prejudices.

CHAPTER IV.

Cornwallis takes the Command.—Second Campaign begins.—Siege of Bangalore.—March to Seringapatam.—Operations of the Bombay Army.—Battle at Arikera between Cornwallis and Tippoo.—Army in Distress for Bullocks and Provisions.—Obliged to return.—Operations of the Mahratta Contingent.—Negotiations with Tippoo.—Debate in the House of Commons on the War with Tippoo.—Preparations for a third Campaign.—Reduction of the Fortresses which commanded the Passes into the Carnatic, and threatened the Communications.—Operations of the Nizam's Army, and of the Mahratta Contingent, in the interval between the first and second March upon Seringapatam.—Operations of the Bombay Army.—Operations of Tippoo.—March to Seringapatam.—Intrenched Camp of the Enemy stormed before Seringapatam.—Preparations for the Siege.—Negotiations.—Peace.—Subsequent Arrangements.

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When the breach with Tippoo first appeared inevitable, the Governor-General formed the design of proceeding to the coast, and of taking upon himself the conduct of the war. He resigned that intention, upon learning that General Medows was appointed Governor of Fort St. George. But he resumed it, when the success of the first campaign fell short of

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his hopes; and on the 17th of November, wrote to the Court of Directors, that, notwithstanding the good conduct, both of the General and of the troops, yet, by the irruption of Tippoo into Coimbetore, by the loss of stores and magazines, and by the check given to Colonel Floyd, enough had been effected to impress unfavourably the country powers, and create a danger lest the Mahrattas and the Nizam should incline to a separate peace: That his purpose, therefore, was, to place himself at the head of the army, not with the overweening conceit that he would act more skilfully than General Medows, but from the supposition, that, holding the higher situation in the government, he could act with the greater weight, and at any rate convince the native powers, by his appearance in the field, of the serious determination with which the East India Company had engaged in the war.

The routes to the centre of Tippoo's dominions, that by one of the southern passes, and that by the line of Velore, Amboor, and Bangalore, presented a choice of difficulties: as the route by the southern passes, gave a line of operation, from Madras, the grand source of supply, both very long, and, owing to the weakness of several of the posts, very difficult to defend; and that in the direction of Velore, afforded little in the way of supply for the wants of the army, and demanded the preliminary operation of the siege of Bangalore, one of the strongest places in Mysore, distant ninety miles from Amboor, the nearest depôt of the besieging army. The issue of the preceding campaign contributed probably to determine Lord Cornwallis in the choice of the latter.

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Tippoo, summoned from his negotiations in the neighbourhood of Pondicherry, by intelligence of the march of Lord Cornwallis toward Velore, on the 5th of February, ascended rapidly by the passes of Changama and Policode; and was ready to meet the English army in its attempt to penetrate by any of the usual and easiest of the passes. Contriving the appearances of a march toward Amboor, which completely imposed upon the Sultan, Lord Cornwallis turned suddenly to the north, and was at the head of the pass of Mooglee, before it was in the power of the enemy to offer any obstruction to his march. The English army began to move from the head of the pass on the 21st of February; and it was the 4th of March before the cavalry of the enemy appeared in considerable force. A mind like that of the Sultan was not very capable of entertaining more than one object at a time. All his military operations were suspended while he was preparing at Pondicherry the means of assistance from the French. When he was frustrated in his hopes of resisting the English in the pass, by their ascent at Mooglee, he was wholly engrossed by the thought of his Harem, left at Bangalore. Dispositions might have been made, to impede his enemy in front, and harass them in the rear, in every possible route. The Sultan, on the other hand, chose to go, in person, at the head of his army, to remove his women and valuables from Bangalore, a service which might have been performed by any of his officers with 500 men; and he allowed the English General to arrive within ten miles of his object, before he had occasion to fire a gun. An intended assault on the baggage on the morning of the 5th

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was frustrated by a skilful movement of the General: and in the evening the English took up their position before Bangalore, without any loss of stores and only five casualties, after a day's exertion of the whole army of Tippoo.

Next day, as the cavalry, commanded by Colonel Floyd, and a brigade of infantry, were performing in the afternoon an observation to the south-west of the fort, they unexpectedly approached the line of encampment, which the Sultan had marked out, and which his army, by a circuitous and undiscovered march, were just beginning to enter. A body of about 1000 horse, all who were not foraging, ordered to check the approach of the English, were the only part of the enemy yet seen by Colonel Floyd; and he moved against them with his cavalry, leaving the infantry in a swampy hollow, with orders there to wait his return. The retreat of Tippoo's horse discovered the rear of his infantry with baggage and guns; the temptation was great; the orders against an enterprise were forgotten; the flying enemy left their guns; the ground became irregular and strong; several charges had been made successfully on the right and the left, when Colonel Floyd advancing to dislodge the largest body of the enemy, received a musket ball, and fell. Though he was not mortally wounded, a retreat commenced; orders could not be distinctly communicated; great confusion ensued; but the infantry, which had been left under Major Gowdie, advanced with their guns to an eminence which commanded the line of retreat, and after allowing the cavalry to pass, opened a fire upon the enemy which soon cleared the field. The danger was over,

when Lord Cornwallis arrived with a division of the army to the support of the fugitives.[1]

The Pettah, a considerable town surrounded by a wall and a ditch, was assaulted on the 7th. "Two ladders," says Colonel Wilks, "would probably have saved many lives, but there was not one in camp; and after a long delay in making a practicable opening in the gate, which the troops bore with the greatest steadiness and patience, the place was at length carried." The Sultan, the very same day, made a powerful effort for its recovery. A part of his army endeavoured to gain the attention of the English by a feint to turn their right, while the main body, by a concealed movement, entered the Pettah. Cornwallis had understood the stratagem, and reinforced the Pettah. So long as the struggle was confined to firing, the superiority was on the side of the Sultan; but when the British troops had recourse to the bayonet, they pressed the enemy from one place to another, and after a contest of some duration, drove them out of the town, with a loss of upwards of two thousand men.[2] The siege had continued till the

[1] Colonel Wilks seems inclined to think that had not Floyd been wounded, the attack might have been successful. Munro thinks the check prevented more serious mischief. "Had he not been wounded," he writes, "he would probably have pushed so far on that he never could have extricated himself, for the enemy were strongly posted, and the flower of their cavalry, which was at some distance, was coming on, led by Tippoo." Life, 109.—W.

[2] "The casualties of the English on this day," (says Colonel Wilks, iii. 125) "amounted to 131, but no loss made so deep an impression as that of Lieutenant-Colonel Moorhouse" (he commanded the artillery) "who was killed at the gate. He had risen from the ranks. But nature herself had made him a gentleman. Uneducated, he had made himself a man of science. A career of uninterrupted distinction had commanded general respect; and his amiable character universal attachment. The regret of

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20th of March, the besiegers incessantly threatened by the whole of the enemy's force, the place not only not invested, but relieved at pleasure with fresh troops; when the Sultan, perceiving that operations were approaching to maturity for the assault, placed his guns, during a fog, on the 21st, in a situation of some strength, whence he could enfilade and destroy the whole of the trenches, and open sap. The English General struck his camp as soon as he perceived this alarming design, and endeavoured to deter the enemy by threatening a general attack. The guns were removed, but carried back in the evening. And this with other causes determined the English General to overlook all the impediments which yet remained to be removed, and to give the assault on that very night. The intention was concealed from his own army till the last moment; and only communicated to the senior officer of artillery, who employed the intermediate space in perfecting, as far as possible, the breach, and taking off the defences of all the works which commanded it. The ladders were nearly planted before the garrison took the alarm. However carefully the intention of assaulting had been concealed, it was not unknown to the Sultan, who, at night-fall, moved his whole army within a mile and a half of the Mysore gate, warned the garrison of the impending trial, and appointed two heavy corps to fall upon both flanks of the assailants; though such effectual precautions were employed to

his general, and the respect of his government, were testified by a monument erected at the public expense in the Church at Madras." This is a generous tribute to singular worth; and deserves remembrance on account of both parties.

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protect them, as frustrated all his designs. The serious struggle had just begun in the breach, when a narrow circuitous way was discovered, which led a few men to the rampart.[1] They waited coolly till joined by a sufficient number of their comrades to enable them to charge with the bayonet. Till the Kelledar fell, the garrison maintained a vigorous resistance. The English, as they penetrated, proceeded by alternate companies to the right and left, every where overcoming a respectable opposition, till they met at the opposite gate. The fury which almost always animates soldiers in a storm, when their own safety depends upon the terror they inspire, led to a deplorable carnage. The enemy crowding to escape had choked up the gate; and the bodies of upwards of one thousand men were buried after the assault. The Sultan, when advertised of the attack, sent a large column to reinforce the garrison, which was approaching the Mysore gate, at the moment when the invaders had met above it from the right and the left. A few shots from the ramparts apprized them of the catastrophe; and the Sultan, who had shown great timidity during the siege, and availed himself very feebly of his means to annoy the besiegers, and waste their time, remained in a sort of torpid astonishment till the dawn, when he returned to his camp.

Nothing but the blunders of Tippoo appears to have prevented this enterprise from failing. And to the evil consequences of that failure, the limit is not

[1] According to Munro, the men ascended the main rampart with very little opposition, for no considerable body of the enemy was formed near the breach. Life, 113.—W.

easy to assign. "The forage and grain found in the Pettah," says Colonel Wilks, "had long been consumed; the neighbouring villages had all been effectually destroyed; and the resource of digging for the roots of grass within the limits of the piquets had been so exhausted, that scarcely a fibre remained. The draught and carriage cattle were daily dying by hundreds at their piquets; and those intended for food scarcely furnished the unwholesome means of satisfying hunger. Grain, and every other necessary, including ammunition, were at the lowest ebb."

Such were the circumstances of the British army. "Of raising the siege," says Colonel Wilks, "the most favourable result would have been, the loss of the whole battering train; and a retreat upon the depôts of Coromandel, pressed by all the energy with which such an event could have inspired the Sultan's army."

On the 28th, Lord Cornwallis was able to move from Bangalore, and proceeded in a northern direction, "the cattle reduced to skeletons, and scarcely able to move their own weight." The intention of this movement was to effect a junction with the corps of cavalry destined for him by the Nizam, his ally. The English and the Sultan crossed each other on the march, when the Sultan declined a rencounter. The forts of Deonhully and Little Balipoor surrendered to Cornwallis without opposition as he passed; and he was joined by the polygars, who paid dearly afterwards to the Sultan for their fault. Intelligence again deserted the English army. After a march of about seventy miles, notwithstanding, in their situation, the unspeakable importance of time, they came

to a stand, not knowing what to do; and halted for five days. False information at last induced the General, in despair of meeting the Nizam's cavalry, to terminate his movement in that direction, and proceed southwards, to meet a convoy advancing by the pass of Amboor. After marching a day in this retrograde direction, he received fresh information, which induced him to trace back his steps; and in two days more he was met by his ally. The force of this ally was nominally 15,000, in reality, 10,000 well-mounted horsemen, who were expected to render good service, in performing the duties of light troops, and extending the command of the army over the resources of the country. The hope of any assistance from them, whatsoever, was almost immediately found to be perfectly groundless. "They soon," says Colonel Wilks, "showed themselves unequal to the protection of their own foragers on ordinary occasions; and, after the lapse of a few days from leaving Bangalore, they never stirred beyond the English piquets, consuming forage and grain, and augmenting distress of every kind, without the slightest return of even apparent utility."[1]

All the means procurable, for the siege of Seringapatam, were now prepared at Bangalore. By the beginning of May, the equipments of the army, except in the article of cattle, were reckoned complete; and beside the motives of economy, and other local advantages attending the termination of the war, Lord Cornwallis, we are informed, was stimulated by a consideration of the French revolution, to

[1] Munro gives a similar account, "the whole of them," he observes, "would not face five hundred of the enemy's horse." Life 116.—W.

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a degree of precipitation, of which, in other circumstances, he might not have approved. The apprehensions and jealousy of the Sultan, and some discoveries at this time of treachery, fired him to various acts of cruelty. Before the departure of Lord Cornwallis from Bangalore, he had taken a strong position on the main road to his capital. To avoid this position, and also a road on which the forage had been carefully destroyed, the English General took the route of Caunkanhully; but the Sultan soon found the means of rendering this, also, a march through a desert.

On the 13th of May, the English army reached Arikera, about nine miles from Seringapatam; the failure of the cattle increasing every day, and the followers of the camp already in the greatest distress for grain, of which a quantity had been destroyed from want of ability to carry it on.

It had been planned that General Abercromby, with the Bombay army, should ascend the Ghauts from Malabar, and penetrate to the centre of the Sultan's dominions, in co-operation with the main army from the east. With infinite labour, that army had constructed roads, and carried a battering train, with a large supply of provisions and stores, over fifty miles of stupendous mountains; "every separate gun being hoisted over a succession of ascents by ropes and tackle." They had reached Poodicherrum by the first of March. But as Lord Cornwallis was not yet ready to advance, he transmitted instructions to that General to halt; and only after he returned to Bangalore, with the cavalry of the Nizam, sent him orders to advance to Peria-

patam, a place distant about three marches from Seringapatam.

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When the army, led by the Governor-General, arrived at Arikera, the river was already so full, as to render impracticable, or at any rate dangerous, his original plan of crossing at that place. Communication, however, was necessary with the army of Abercromby; and he resolved to march to the ford of Caniambaddy, eight miles above Seringapatam. The Sultan, in the mean time, not daring to leave his capital to strike a blow at the army descending from the west, and ashamed to let it be invested without a struggle, had mustered resolution for a battle. On the same day on which the English army arrived at Arikera, the enemy took up a strong position about six miles in their front. As the ground for the direct approach of the English army was unfavourable, being a narrow broken space between the river and a ridge of hills, the commander resolved, by a march, which he learned was practicable, to cross, during the night, the ridge of hills on the enemy's right, to turn his left flank before day-light, and gaining his rear, cut off the retreat of the main body of his army to Seringapatam. A dreadful storm disconcerted this well-planned enterprise; by rendering it impossible for the corps to find their way, and proceed in the dark. Lord Cornwallis, however, halting till dawn, resolved to persevere, as he could not repeat his stratagem, after the enemy was apprized; and expected some advantage, by forcing him to an action on other ground than that which he had deliberately chosen.

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"Tippoo Sultaun did not decline the meeting; and the praise," (says Colonel Wilks, who appears to have little pleasure in praising the Sultan, but great in imputing to him all the bad qualities which belong to the most despicable, as well as the most odious, of the human race) "cannot, in justice, be denied to him on this occasion, of seeing his ground, and executing his movements, with a degree of promptitude and judgment, which would have been creditable to any officer." The loss of the English was chiefly sustained during the time necessary to form under the guns of the enemy. For after they were in a condition to advance, the troops of Tippoo did not long maintain their ground; and were pursued till they found refuge under the works of Seringapatam.

So ill were the arrangements of the English taken for procuring intelligence, and so well those of Tippoo for intercepting it, that no information was possessed of General Abercromby, to open communication with whom, it was now resolved to march to Caniambaddy. In this march, lengthened by a circuit to twenty miles, three days were consumed; exhibiting to the enemy, in the battering train, and almost every public cart in the army, dragged by the troops, "conclusive evidence," says Colonel Wilks, "of the utter failure of all the equipments of the English army." Not only were food and carriage wanting; but fatigue, with the rains, which were now almost incessant, and defective unwholesome food, had filled the camp with disease, in which, in addition to other horrors, the small-pox raged with uncommon violence.

Such, in the mind of Lord Cornwallis, was the state of the faculties on which foresight depends, that, after he had brought the army to the extreme point of its line of operations, on the day after his arrival at Caniambaddy, when the official reports of the morning were presented to him, and not before, did he discover, that all this fatigue, all this misery, all this loss of lives, and all this enormous expense, were to no purpose; that he could not attempt a single operation, that he must destroy the whole of the battering train and heavy equipments, and lose no time in endeavouring, by retreat, to save, if it yet were possible, the army from destruction.

To General Abercromby, of whom as yet no intelligence was obtained, orders were written to return to Malabar. On the same day the appearance of considerable bodies of troops marching, as toward General Abercromby, from Seringapatam, so greatly alarmed the Governor-General, that he sent three brigades across the river, merely to attract the enemy's attention; though it was not improbable that the river would fill, and, precluding return, place them in a situation from which they could hardly expect to escape.

General Abercromby received, not without surprise, the orders to return. They were followed by a similar destruction of the heavy guns and equipments, as that which took place in the army of Cornwallis; except that a part of the guns were buried at the head of the pass. Almost all the cattle lost their lives, and the men their health, in performing back a long and unprovided march at a dreadful season. And the cost of this expedition, in

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On the 26th of May, the army commenced its melancholy return. Before the first six miles were accomplished, a party of horse unexpectedly rode in upon the baggage flank. They were taken for enemies; but proved to be Mahrattas, from whom was received the joyful intelligence of the near approach of two armies, led by two of the Poonah Chiefs, Hurry Punt, and Purseram Bhow.

The tardy arrival of the Mahrattas has been accused, as the cause of the disaster sustained by the British army, and of their disappointment in respect to the capture of Seringapatam. How far it was in the power of the General to have provided himself better with bullocks and provisions, we are without the means of accurate knowledge. That no dependence ought to have been placed upon the punctuality of the Mahrattas, it would be extraordinary indeed if there was not, at that time, sufficient experience in his camp to give him full information. Of the campaign of this portion of the confederate force a very brief account must suffice.

The detachment of the British troops, for whose service with the Mahrattas an agreement had been made in the recent treaty, left Bombay on the 20th of May, 1790; disembarked in the Jaigur river; ascended the Ghauts by the Ambah pass; and joined the army of Purseram Bhow, consisting of about 20,000 horse, and 10,000 foot, near the town of Coompta, about fifty miles from the pass, on the 26th of June. They proceeded without resistance till they arrived

at Darwar, one of the great barriers of Tippoo's northern frontier, situated some miles south of the river Malpurba, and from Goa eastward about seventy miles. The Mahrattas took ground before the place on the 18th of September; and it was not till the 3rd of April, after a wretched siege of twenty-nine weeks, that it surrendered upon capitulation. The Mahrattas, when battering in breach, aim at no particular spot, but fire at random all over the wall. "From their method of proceeding," says Lieutenant Moore, who was an indignant witness of so much loss of time, "we are convinced they would not, with twenty guns against the present garrison, approach and breach Darwar in seven years. A gun is loaded, and the whole of the people in the battery sit down, talk, and smoke for half an hour, when it is fired, and if it knocks up a great dust, it is thought sufficient; it is reloaded, and the parties resume their smoking and conversation. During two hours in the middle of the day, generally from one to three, a gun is seldom fired on either side, that time being, as it would appear, by mutual consent set apart for meals. In the night the fire from guns is slackened, but musquetry is increased on both sides, and shells are sparingly thrown into the fort with tolerable precision."

The same intelligent officer makes the following remarks. "March the 1st.—Our line is more sickly than it has hitherto been; many officers are ill: and among them our Colonel; whose situation is peculiarly cruel, being the only Company's officer, commanding in the field, set down before a fort of this importance, without a single requisite for reducing it, and subject to the delays, and irksome

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frivolity, of our tardy allies.—Too much confidence seems to have been placed in their promises of supplies: and it should be a caution, how, again, the success and credit of the British arms is suffered to depend upon the punctuality of a country power.—If any can be at all trusted, it certainly is the Mahrattas: but, even with them it seems a matter of little moment to what extent their promises are made. And although, at the time, they may have no intention of breaking them, it is to be understood that failure is no discredit: nor must punctuality be expected any further than their own views are forwarded by observing it."

"March the 13th.—We were this morning," continues Mr. Moore, "much surprised to hear of the death of our much respected Colonel; for none but the medical gentlemen had any idea of its being so near. Actuated by the ardour of a soldier, his enterprising spirit could not brook the procrastination to which he was obliged to submit: and, losing, with the unsuccessful attempt of the 7th of February, all expectation of an honourable conquest of the fort, he had from that time been on the decline. No event could have been more acute to his detachment, for with them he was universally beloved; nor could the Bombay army, of which he was at the head, have sustained a severer loss."[1] Colonel Frederick, such was the name of this meritorious officer, was succeeded by Major Sartorius, in the command of the detachment; and by Captain Little, when that

[1] Moore's Narrative of the Operations of Captain Little's Detachment, p. 30, 32.

officer returned to Bombay, after the surrender of Darwar.

The original garrison was estimated at 10,000 men; but from the numbers which were sent away after the Pettah was taken, and the desertions and casualties during the siege, it was at last reduced to 3000. To have placed Darwar in blockade, nothing less than an army would have sufficed; and the capture was necessary to secure the Mahratta communications. Had it fallen earlier, the Mahratta army would have been employed in ravaging Tippoo's dominions, and cutting off supplies from the country to the north.

The Bhow's army, after leaving Darwar, proceeded by easy marches to the Toombudra, and had subdued the little resistance opposed to them at all the forts which protected the possessions of Tippoo north of that river, early in May. Lord Cornwallis had written to Poona that he expected to be joined by this chief at Seringapatam: and as soon as the Bhow obtained intelligence of the arrival of the English at Seringapatam, he proceeded towards them with all the expedition in his power. And as he approached, he was joined by Hurry Punt, who had advanced by a more easterly route through Gooty, Raidroog, and Sera, recovering, in that direction, the conquests made upon the Mahrattas by Hyder and his son; and on the 28th of May, the interview between them and the British commander took place. At this period the army of the Bhow was estimated at 20,000, that of Hurry Punt at 12,000, horse and foot.[1]

[1] This is the statement of Major Dirom, who was Deputy Adjutant-

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But the Mahrattas, now when they had arrived, were unable to keep the field, or at least persuaded Lord Cornwallis that they were unable, unless they received from the English pecuniary support. He agreed to advance to them a loan of twelve lacs of rupees; and, in order to obtain the money, had recourse to one of those bold expedients which would have proved the ruin of any of his less protected predecessors. From his camp, near Ootradroog, on the 21st of June, he wrote to the Governor and Council of Madras, to take the treasure out of the China ships, and, coining it into rupees, to send it to him with the utmost possible despatch.[1]

Tippoo announced to his own people the battle on the 15th as a victory, the effect of which had been to make the English destroy their battering train, and force them to retreat, and on the 26th, he ordered a salute to be fired from the fort. In the mean time, certain communications had taken place between him and Lord Cornwallis on the subject of peace. So early as the 18th of February a letter from the Sultan, dated the 13th, was received at Muglee, proposing to send or receive an ambassador. Lord Cornwallis replied on the 23rd, that as the infraction of the treaty was on the part of the Sultan, it was necessary to know whether he was prepared to make reparation. On the 3rd of March an answer arrived, in which the Sultan endeavoured to show, that the conduct of

General of his Majesty's forces in India, and with the army at the time. Lieutenant Moore thinks that the army of the Bhow is thus considerably under-rated.

[1] Papers (No. 4) ordered by the House of Commons to be printed, 16th February, 1792.

the Raja of Travancore justified the attack upon his lines; at the same time disclaiming all idea of insult to the British government; and expressing a wish for negotiation. To this he received no reply. On the 27th of March the Sultan despatched another letter, offering directly to send an ambassador. Lord Cornwalls declined receiving an ambassador, on the ground of his not as yet having with him any persons qualified to treat on the part of his allies; but if the Sultan would send his propositions in writing, he would transmit them to those allies, and return an answer. On the 17th of May, when Lord Cornwallis released the wounded prisoners after the action of Arikera, Tippoo renewed the proposal of negotiation Lord Cornwallis, having persons now with him, on the part of the Mahrattas and the Nizam, answered, on the 19th, that if the Sultan would state his propositions in writing, commissioners might be chosen to meet; and that he would consent to a cessation of hostilities, if it were the Sultan's desire. On the 24th, when Lord Cornwallis was at Caniambaddy, had destroyed his battering train, and sent three brigades across the river, Tippoo answered. He took no notice of the proposition for a cessation of hostilities, and only urged anew the propriety of mutually appointing confidential persons to discuss. Lord Cornwallis now departed from the point of written propositions, on which he had hitherto insisted, as an indispensable preliminary, and proposed that the allies should send deputies to Bangalore. On the 27th, when this letter was not yet answered, and the army, now joined by the Mahrattas,

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was advancing in view of Seringapatam, a present of fruit was sent to Lord Cornwallis, accompanied by a letter from the Sultan's secretary to the Persian interpreter. This was regarded as a contrivance to sow jealousy between the English and their allies: and the present was returned.[1] On the 29th Tippoo replied; and after some prolix and vague explanations, recommended that Lord Cornwallis should return to the frontier, and then act as his last letter proposed.

With the Mahratta army, provisions and draught cattle arrived; though these allies, knowing well the situation of the English army, would part with nothing at a moderate price. The loss, however, of the battering train, the return of General Abercromby, and the state of the season, forbidding the siege of Seringapatam; the combined army, having resolved upon falling back to Bangalore, proceeded on the 6th of June, in a northern direction, to Naugmungul, and thence eastward to the river Madoor, which they crossed on the 19th of the same month. While encamped on the eastern bank of this river, a detachment of the English army went forward to summon and threaten Hoolydroog; a hill fort, six miles east from the pass of the river, too strong to have been

[1] The passion with which soldiers are averted from peace is a phenomenon awfully interesting. The arrival of these presents indicated a good understanding; which, if it existed, might be supposed to exist, on grounds deemed more favourable to the nation than war. "It will be difficult," says Colonel Wilks, "for the reader to conceive the intense delight with which on the ensuing morning the whole army beheld the loads of fruit untouched, and the camel unaccepted, returning to Seringapatam." The fact is, that the English in India, at that time, had been worked up into a mixture of fury and rage against Tippoo, more resembling the passion of savages against their enemy, in fact more resembling his passion towards them, than the feelings with which a civilized nation regards the worst of its foes.

taken, had the courage of the garrison allowed them to defend it; but they dreaded resistance to European soldiers, and agreed to surrender, upon condition of security to themselves and their private property. A provision was found in it of sheep, cattle, and grain; a seasonable relief to the army: and the fort was destroyed, as neither the English nor the Mahrattas thought it worth retaining. The fortresses of Ootradroog, and Savendroog, were likewise summoned during the march; but without effect; and in present circumstances, it was not expedient to attempt their reduction.

The combined army arrived in the neighbourhood of Bangalore early in July; and were exhilarated by several articles of agreeable intelligence.

To supply the demand of the army for draught bullocks and rice, the following were the plans which, upon the discovery of that deficiency which occasioned the retreat, were adopted. The trade of corn in India is carried on in a mode peculiar to that country. The merchants in corn are a particular caste denoted by the term Brinjarries. They traverse the country, conveying the grain, often from the greatest distances, in large bodies which resemble the march of an army. They encamp with regularity, never lodging in houses; are strongly armed; and ready to fight no contemptible battle in their own defence. The practice comes down from a remote antiquity; and marks that unsettled and barbarous state of society, when merchants are obliged to depend upon themselves for the means of their defence. The experienced utility of their services has procured them considerable privileges. They are regarded as

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neutral in all wars; they enjoy a right of transit through all countries; and the armies, which spare nothing else, act under a species of obligation, seldom violated, of respecting the property of the Brinjarries. One of the officers of the Company, Captain Alexander Read, well acquainted with the language and customs of the natives, suggested to the Commander-in-Chief the expedient of availing himself of the extensive resources of the Brinjarries. It was resolved, in consequence, that encouragement should be held out to them, to resort with their cargoes to the English camp. Captain Read was employed to circulate intelligence; and before the arrival of the army he had collected more than ten thousand bullock-loads of grain.

For the supply of bullocks, nearly forty thousand of which had been lost in the last campaign, Lord Cornwallis, beside the contractors, employed agents to purchase them on the part of the government, and directed the same to be done at Madras. As a relief to the exigencies of this department, he also made an agreement with the officers, to carry and provide their own tents for a monthly allowance, during the remainder of the war, and a similar arrangement with the officers commanding battalions of sepoys, for the tents of their corps, and the carriage of their ammunition and stores. Upon the arrival of the army at Bangalore, it was found that success had attended those exertions; and that 100 elephants from Bengal had arrived at Velore.

The army had the further satisfaction of learning that Gunjcotah, which had been for some time besieged by the Nizam's troops, including the British

detachment, had surrendered on the 12th of June; and had given a valuable country to that ally.

The intelligence also from Europe was exhilarating, to an army keen for the continuance of the war. On the 22nd of December, 1790, Mr. Hippesly, in the House of Commons, had called in question the justice and policy of the war: had affirmed that the Raja of Travancore was the aggressor, by his lines on the Cochin territory, and his purchase from the Dutch; that the Mahrattas were the people from whom in India the greatest danger impended over the interests of England, and that the Mysore sovereign was valuable as a balancing power; that the resources and genius of Tippoo rendered a war against him an undertaking of no common difficulty and hazard; and that the finances of the Company, feeble and exhausted as they were acknowledged to be, could ill endure the burden of an expensive war. Mr. Francis and Mr. Fox repeated and enforced the same considerations.

On the 28th of February, Mr. Hippesly renewed the discussion, when the alliance concluded with the Nizam and Mahrattas afforded a new topic. He complained that, in those treaties, though made ostensibly on account of the attack on Travancore, the Raja was not mentioned. The cause however of the Raja was included in that of the English; and the interposition of such a people as the Mahrattas and the Nizam, in any shape, between the English and their allies, was incapable on almost any occasion of conducing to good, far from incapable on many occasions of conducing to evil.

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Mr. Fox assailed the alliance in a tone of vehement reprobation. He denounced it a plundering confederacy for the purpose of extirpating a lawful Prince. He said, that when the progress of civilization had rendered men ashamed of offensive alliances in Europe, we had signalized our virtue by renewing them in India. He described the family compact of the House of Bourbon, as the last of those odious leagues which had disgraced the policy of civilized Europe. As soon as a better order of things in France arose, it dissolved, he said, that wretched engagement, and put an end, he hoped for ever, to those expedients of wicked governments in a barbarous age.

In reply to these accusations, circumstances were presented to show; that the war in the first place was defensive; in the next place necessary to deter an insatiable enemy from perpetual encroachments; and lastly politic, as affording every prospect of a favourable termination. And on the 22nd of March, Mr. Dundas moved three resolutions, which passed without a division, declaring that Tippoo had broken the treaty by his attack on the lines of Travancore, and that Lord Cornwallis deserved approbation, as well for his determination to prosecute the war, as for the treaties he had formed with the Nizam and Mahrattas. The favour manifested to the war in England, was by no means confined to empty praise. The Company resolved to send out 500,000*l.* in specie: an augmentation was voted to the establishment of the King's regiments in India: Another detachment of the royal artillery was destined for the same purpose; The Company exerted them-

selves to send out recruits: And all these reinforcements and supplies, the General was given to understand he might receive by the ships of the season.

It was necessary for the facility of subsistence, and certain preparatory operations, that the allied armies should separate during the inactive season. The Bhow, with the detachment of Captain Little, shaped his course toward Sera. The greater part of the Nizam's horse went to join the rest of the Nizam's army. Hurry Punt, with the English, remained at Bangalore. Tippoo, it was supposed, would not dare to make an advance against any of these detached armies, for fear of being intercepted in his retreat.

The Policade pass afforded the easiest communication with the Carnatic; and one of the most commodious issues for the sudden incursions of the enemy. It was commanded by several forts, of which Oossoor and Rayacottah were the chief. With four heavy iron guns, which had not been carried to Seringapatam, and four iron twelve-pounders, which had been kept for field service, when the heavier guns were destroyed, the army on the 15th of July began to move towards Oossoor. Tippoo had lately made exertions to improve the defences of this important place; fortunately they were not so far advanced as to render it tenable in the opinion of its defenders; and upon the approach of the English they made a precipitate retreat. From Oossoor, left with a strong garrison, a brigade of the army under Major Gowdie, proceeded against Rayacottah; which consisted of two forts, one at the bottom, the other at the top of a stupendous rock. They carried

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the first by assault; and, pursuing the fugitives, got possession of two walls, which formed a rampart between the higher and lower fort. The place, if well defended, was too strong by nature to be reduced; and Major Gowdie had instructions to return, if it was not surrendered upon the first attack. As the lodgement, however, which he had effected on the hill, covered the troops from the fire of the upper fort; and he believed the enemy intimidated, he begged permission to persevere. The daring conduct of the assailants, with aid from the main army, soon produced the desired effect upon the mind of the Kelledar; and, on condition of security to private property, and leave to reside with his family in the Carnatic, he surrendered this "lofty and spacious fort, so strong and complete, in all respects, that it ought to have yielded only to famine and a tedious blockade."[1] The rest of the forts by which the pass was defended, either obeyed the summons, or made a feeble resistance. The convoy which had reached Amboor, on its way from Madras, received directions to proceed by the newly-opened route, and the army remained in the neighbourhood of Oossoor to cover its march. One hundred elephants, all loaded with treasure, marching two a-breast, with the British standard displayed; 6000 bullocks with rice, 100 carts, with arrack, and several hundreds of coolies, with other supplies, entered the camp on the 10th of August; a convoy to which nothing similar had ever joined a British army on Indian ground.

While the army remained at Oossoor, a vakeel,

[1] The words of Major Dirom.

commissioned to treat with all the allies conjointly, was sent by Tippoo. Lord Cornwallis consented, it seems, to receive him, "at the warm instances of Hurry Punt;" little expecting that Tippoo would yet submit to the terms he was disposed to require, but desirous of avoiding every appearance, which might be thought to indicate a disinclination to peace. Upon a point of form, the ambassador being commissioned to treat only with principals, and Lord Cornwallis declining to treat with an agent, and upon the surmise that the object of Tippoo was intrigue, and the consumption of time, the messenger was sent back to his master without being permitted to enter the camp.[1]

Between Bangalore and Goorumconda lay some hill-forts, which interrupted the communication with the Nizam's army, and rendered it difficult to receive supplies from the country to the north. The brigade of Major Gowdie was again in requisition. The only fortress which made any considerable resistance was Nundydroog, before which the Major arrived on the 22nd of September, with a force, consisting of one regiment of Europeans, six battalions of sepoys, six battering guns, and four mortars. The fort was

[1] On this occasion, as well as on that of the overture on the 27th of May, Major Dirom is careful to mention the joy which pervaded the army when the overture was rejected.—It is another, among the many proofs of a most remarkable fact, that whole masses of men are capable of desiring the death of thousands of their fellow-creatures, at once, simply for their own profit. Had the negotiation proceeded and been productive of peace, it might have been supposed, by an army which had confidence in Lord Cornwallis, that the peace, which he deliberately approved, was better for their country than war. *Better for their country.*—Yes. But not better for them, because it precluded the acquisition of plunder, promotion, and glory.

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situated on the summit of a mountain, about one thousand seven hundred feet in height, of which three-fourths of the circumference was absolutely inaccessible, and the only part which could be ascended was guarded by two excellent walls, and by an outwork which covered the gate-way and yielded a flank fire. A road was cut, and the guns dragged with infinite difficulty to the top of an adjacent hill; but there, after a battery was erected, the guns were found to be too distant even to take off the defences of the fort. No alternative remained, but either to work up the face of the principal hill, or lose the advantage of the impression struck on the minds of the enemy's garrisons, who believed that no strength, either of nature or of art, was sufficient to protect them against an English attack. The exertions demanded were excessive. Without the strength and sagacity of the elephants, the steepness of the ascent would have rendered it impossible to carry up the guns. Fortunately the shot of the fort, from a height so nearly perpendicular, seldom took effect; but the men were severely galled by the ginjall, a species of wall pieces, which threw with precision, to a great distance, a ball of considerable size.

Batteries were erected after a labour of fourteen days; and in a short time two breaches were effected, one on the re-entering angle of the out-work, the other in the curtain of the outer wall; while the inner wall, at the distance of eighty yards, could not be reached by the shot. The Governor still refused to surrender, and the British commander made an offer, which it is pleasing to record, to send out the women, and other persons not bearing arms, that

they might not suffer in the storm. The breaches being reported practicable to the Commander-in-Chief, he detached the flank companies of the 36th and 71st regiments to lead the assault; and General Medows, who, though superseded in the chief command, had seconded every operation of the war with an ardour and fidelity which did him the highest honour, offered to conduct the perilous enterprise. It was determined to storm the breaches, to attempt the inner wall by escalade, and, if this should fail, to make a lodgement behind a cavalier between the walls, and thence proceed by regular attack. A trench which had been dug within a hundred yards of the wall was formed into an advanced parallel, and the flank companies were lodged in it before day-break. At midnight, the orders were given, when the men moved out from the right and left of the parallel, and rushed to the assault.[1]

The fort was instantly illuminated with blue lights; a heavy fire was opened; and large stones were rolled down the hill. The fire was ill-directed; but the stones rushing down the precipice were exceedingly formidable, and had considerable effect. Both the breaches were quickly mounted; and the storming party penetrated with such rapidity, that time was not allowed for barricading completely the gate of the inner wall, and, after some difficulty, it was fortunately opened. The meritorious exertions of Captain Robertson, who led the grenadier com-

[1] When the hour was approaching, some person said, in the hearing of the troops, that a mine was reported to be near the breach. General Medows, anticipating the effect upon their minds, cried aloud, "If there be a mine, it is a mine of gold."

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panies to the breach in the curtain, prevented the carnage which so often attends the capture of places by assault; and of the whole garrison, about forty only were killed and wounded. The storming party had two men killed and twenty-eight wounded, the latter chiefly by the stones descending the hill.

By this time the ships of the season had brought out the expected reinforcements, money and military stores, with 300 troops from St. Helena, who coming a shorter voyage, and seasoned to a warm climate, arrived in perfect health: The powers of the several Presidencies had been strained to the utmost to make provision for the war: The preparations were upon a great scale; and now in a high state of perfection. From Nundydroog the army moved toward the passes, for the protection of the convoys proceeding from Madras; while a detachment, commanded by Col. Maxwell, was sent to clear the Baramahal valley, in which, and the adjoining districts, a party of the enemy were effecting depredations.

The principal protection of this predatory party was Penagra, a strong mud fort at the south end of the valley. By forced marches the detachment arrived before it on the 31st of October. A flag of truce, sent to summon, was invited to advance, by signs from the wall, and then repeatedly fired upon. The wall was scaled; and the enemy hung out the flag for quarter in the middle of the assault. It was too late: the troops had closed with them; and out of 300 men who composed the garrison, 150 were slain. Of the captors, seven alone were slightly wounded.

The detachment returned, and encamped within a few miles of Kistnaghery. This was another of those stupendous rocks, or rather insulated mountains, which form the strong-holds of India, and one which yielded to few of them in natural strength. Although it was not supposed that the reduction of the upper fort was an undertaking to which the detachment was equal, it was of importance, in order, as much as possible, to cut off whatever afforded cover to the predatory incursions of the enemy, to destroy the Pettah, and the works at the bottom of the hill. They were attacked under cover of the night; and the troops escalading the walls, got possession of them without much resistance. The ardour of the assailants made them conceive the hope of entering the upper fort with the fugitives. They rushed up with such rapidity, that, notwithstanding the length and steepness of the ascent, the enemy had barely time to shut the gate; a standard of the regulars was taken on the very steps of the gateway; and had the ladders been up at this critical moment, it is probable that the walls would have been escaladed. The enemy had time to begin their operation of rolling down enormous stones, which, descending in vast quantities crushed, at once, the ladders and the men. During two hours the strongest exertions were made to get the ladders up the small part of the road which was most exposed to the stones. But a clear moonlight discovered every motion; and, when most of the ladders were broken, and the troops had severely suffered, Colonel Maxwell was compelled to put an end to the attempt. After this, having reduced several petty forts, he rejoined the army.

Between Bangalore and Seringapatam, lies a tract

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of hills, thickly covered with wood, extending from the vicinity of Bangalore to the river Madoor. This difficult country, which of itself formed a strong barrier to the capital of Mysore, was studded with forts, of which some, particularly Savendroog, was of extraordinary strength. It offered such advantages to the enemy, for interrupting the communication with Bangalore, when the army should advance to Seringapatam, that the Brinjarries, who engaged for large quantities of grain at Bangalore, would not undertake to supply it beyond Savendroog, if that fortress remained in the enemy's hands. Lord Cornwallis was now provided with his battering train; and resolved, while delayed by the Mahrattas, and waiting for the last of the convoys, to make an effort to gain possession of this important, but formidable post.

It is a vast mountain of rock, computed to rise above half a mile in perpendicular height, from a base of eight or ten miles in circumference, surrounded by a close forest, or jungle, several miles in depth, having its natural impenetrability heightened by thickets of planted bamboos. A narrow path, cut through the jungle, in a winding direction, and defended by barriers, served as the only approach to the fort: The natural strength of the mountain had been increased by enormous walls and barriers, which defended every accessible point: And to these advantages was added the division of the mountain, by a great chasm, into two parts at the top, on each of which was erected a citadel; the one affording a secure retreat, though the other were taken; and by that means doubling the labour of reduction.

Lieutenant-Colonel Stuart, employed during the

first Campaign in reducing Dindegul and Palacatcherry, was destined to command at the siege of Savendroog. On the 10th of December, he encamped within three miles of that side of the rock from which it was proposed to carry on the attack; while the Commander-in-Chief made that disposition of the rest of the army, which seemed best adapted to cover the besiegers, and secure the convoy.

The first labour was immense, that of cutting a way through the powerful jungle, and transporting heavy guns over the rocks and hills which intervened.

The closeness of the surrounding hills and woods had rendered this fortress as remarkable for its noxious atmosphere as its strength. Its name signified literally the rock of death. And the Sultan congratulated his army upon the siege; at which one half, he said, of the English army would be destroyed by sickness, the other by the sword. The confidence of the garrison in the strength of the place had this good effect, that it made them regard the approach of the besiegers as of little importance; and they were allowed to erect their batteries without any further opposition than the fire of the fort.

Within three days after the opening of the batteries the breach was practicable. The jungle was now of advantage; for growing close up to the very wall, the troops were able to scramble up unseen, by the crevices and rugged parts of the rock, and made a lodgement within twenty yards of the breach. The 21st of December was the day chosen for the assault; and Lord Cornwallis and General Medows arrived to witness the terrible scene. The grenadiers of the

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52nd, and flank companies of the 76th regiment, led by Captain Gage, were to gain the eastern summit; Captain Monson, with the light company of the 52nd, was to scour the works on the western; the flank companies of the 71st, under Captains Lindsay and Robertson, were to engage whatever works or parties might be found in the chasm between; the 52nd and 72nd regiments to follow the flank companies; and parties, under Colonel Baird and Major Petrie, were to proceed round the mountain, for the purpose of attracting the attention of the enemy, and preventing escape.

At an hour before noon, on a signal of two guns from the batteries, the flank companies advanced to the breach, and mounted, while the band of the 52nd regiment played *Britons strike home.* The enemy, who had descended for the defence of the breach, when they beheld the Europeans advancing, were seized with a panic; and Captain Gage had little difficulty in carrying the eastern top: The danger was, lest the flying enemy should gain the western summit, which, from the steepness of the approach, and the strength of the works, might require a repetition of the siege. To provide for this contingency, Captain Monson had directions, if he thought advancing imprudent, to effect a lodgement in some part of the hill from which the operations might be carried on. Fortunately the enemy impeded one another in the steep and narrow path up which they crowded to the citadel, while some shot, which opportunely fell among them from the batteries, increased their confusion. Captain Monson, with the light company of the 52nd regiment, and a serjeant and twelve gre-

nadiers of the 71st, pressed after the fugitives, and so critical was the moment, that the serjeant of the 71st regiment shot, at a distance, the man who was closing the first of the gates. All the other barriers the English entered along with the enemy, about 100 of whom were killed on the western hill, and several fell down the precipices endeavouring to escape. The prisoners taken were few. The garrison, they said, had consisted of 1500 men, but a great part of them had deserted during the siege. Of the English, only one private soldier was slightly wounded.

On the 23rd of December, Colonel Stuart was again detached against Ootradroog. This was another fortress of the same description, about twelve miles from Savendroog. It had been summoned when the army retreated the preceding year from Seringapatam. But the Kelledar replied, "I have eaten Tippoo's salt for twenty years, and will not give up my post, till you first take Seringapatam." He was still so determined in his resistance, that he would admit of no communication, and fired on the flag. Next morning the lower fort was carried by escalade; when the Governor requested a parley. While this was taking place, the assailants imagined they saw the garrison moving, and treacherously pointing their guns; upon which they rushed to the assault. Some of the gateways they broke, others they escaladed. Though many parts of the road were so narrow and steep, that a few resolute men might have defended themselves against any attack, so great was the alarm of the enemy, that they fled wherever they saw a single European above the walls. At the last gate only, they fired a few shot,

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by which two soldiers were wounded. Masters of the summit, the assailants fell upon the garrison, of whom many, to avoid the bayonets, precipitated themselves from the rock. The Kelledar, with some others, was taken prisoner. He reported that his garrison, on the arrival of the detachment, had mutinied; and that 400 had deserted during the night.

After the success of these hazardous enterprises, none of the inferior places had courage to resist; and the line of communication for the ultimate operations of the war was now rendered secure. The last great convoy from Madras, of which the fall of the rains, and the state of the roads, had rendered the progress very slow, arrived, on the 2nd of January, at Bangalore. The Brinjarries had 50,000 bullocks, conducting grain to the army, even from the enemy's country itself, in quantities which no exertions of the public service could have matched. From the state of public credit, and the money sent out from England, Lord Cornwallis had, what in no former war the Indian rulers had ever enjoyed, an overflowing treasury. At the same time it was ascertained that the treasury of the enemy was in a far different situation; for several of his principal Brinjarries brought their grain to the British camp, complaining that Tippoo was unable to pay them, and could give them nothing but ineffectual orders upon the collectors of his revenues.

Such were the proceedings of the army under Lord Cornwallis, during the season in which the main operations of the war were suspended. A short account is required of what, during the same

time, was performed, by the other divisions of the confederate force.

By the army of the Nizam, only two objects had been effected during the war; the reduction of Gunjicottah, and that of Kopaul. Not one even of these places could have been taken without the British detachment; and the reduction of the latter might be regarded as more a consequence of the fall of Bangalore than of the operations of the siege. This army had been employed, since the month of August, in the attack of Goorumconda; but, depending on the Nizam's artillery, were not able to breach the lower fort, till the guns which had been employed at Nundydroog, and a supply of ammunition, were sent from Bangalore. With British guns, the British artillery-men completed a breach in two days; and prepared for the assault. As the small party of artillery-men were the only Europeans present, they gallantly offered, after breaching the place, to quit their guns, and lead the assault. The reduction of the lower fort had not long been effected, when a large reinforcement arrived from Hyderabad, under the Nizam's second son. The upper fort being regarded as too strong for assault, a body of troops was left to establish a blockade; while the main army, by concert with Lord Cornwallis, moved into the neighbourhood of Colar, to cover the convoy, which was proceeding from Madras with the last of the ammunition and stores for the siege of Seringapatam. This movement escaped not the attention of Tippoo; Hyder Saib, his eldest son, appeared suddenly before Goorumconda, with a flying party; and took the lower fort, with the whole of the de-

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tachment left for the blockade. This immediately recalled the main army, and exposed the convoy, which had ascended the Ghauts, and arrived at Vencataghery, to a danger which would have been great, had the detachment with Hyder Saib been sufficiently strong. But he satisfied himself with throwing succour into Goorumconda; and carrying with him the families of some principal people, he returned to Seringapatam.

Purseram Bhow passed Serah, which had surrendered to Hurry Punt, on his march to the southward; and arrived, without any memorable event, in the neighbourhood of Chittledroog, early in September. This was the capital of a considerable Raja, whose dominions Hyder added to his own about the year 1776. It was one of the strongest hill-forts in India, and said to be garrisoned by upwards of 10,000 men. The Bhow, who had no idea of gaining it by force, thought he might succeed by treachery, and endeavoured to seduce the commander, but in vain.

The Bhow seemed to have hardly any other object than to procure repose and refreshment to his army in the neighbourhood of Chittledroog, till after the beginning of December, when forage began to fail. A fertile country was intersected by the Toom and the Budra, which, by their junction, form the river, the name of which is also composed by the union of theirs. It was defended, however, by several forts. Hooly Honore, one of the most important of them, situated at the conflux of the rivers, Captain Little, with his detachment, undertook to reduce. He took up his ground on the

19th of December; effected a breach the following day; and carried the place by storm in the night. After this, the smaller forts surrendered without opposition; and only Simoga remained.

Tippoo, at a preceding period of the season, had sent one of his generals, with a considerable army, to keep open his communication with the rich provinces of Bednore and Mangalore, almost the only part of his dominions which was not either in the possession of his enemies, or had sustained the ravages of the war. This officer had taken post near Simoga. But on the approach of the Mahrattas, he left his intrenchments, for a position in the woods, some miles to the westward, from which he purposed to act upon them during the siege.

It was of great importance to begin by dislodging this enemy. But all the difficulties and hazard of the attempt were by no means understood. His position was one of the strongest which the choice of circumstances could have given. His right was completely defended by the river Toom: his left by hills covered with jungle, which approached within a mile of the river; his rear was secured by an impenetrable jungle; and a deep ravine, having a jungle beyond it, protected his front. "The open space," says Lieutenant Moore, "on which the enemy had pitched their camp, was not more than six hundred yards wide; and was, upon the whole, naturally, the strongest place we ever saw; nor can we form an idea of one more disadvantageous to an assault. Had their situation been accurately known, no one, but an officer who had the most unlimited confidence in his troops, could, in prudence, have hazarded an attack."

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Of course the enterprise fell to the English. In such a position the Mahratta cavalry were unable to act; and a corps of infantry who had advanced into the jungle, when directed to a position where possibly they might have been of some use, declared they had no ammunition. Not only were the Mahrattas useless; "so far as we observed," says Lieutenant Moore, "they were no trifling impediment."

Leaving, by the Bhow's desire, four guns with nine companies, to guard the camp, Captain Little, with the remainder of his detachment, less than 750 bayonets, and two guns, proceeded to the attack. About one o'clock they entered the jungle, tolerably open at first, but extremely thick as they approached the enemy; who opened upon them a heavy discharge of guns, musquetry, and rockets. Both officers of the 8th grenadiers fell; and Captain Little had some difficulty in supporting the Sepoys under their loss. The action continued doubtful a considerable time; for as only small and broken parties could pass the ravine, which was very deep, the English could not come to the decision of the bayonet. After the repulse of several parties, some of whom had penetrated into the camp, Captain Little rallied the grenadiers, and, putting himself at their head, carried the posts on the enemy's right, when the rest of the line pressed onwards, and, in a short time, cleared the field. The English pursued, and captured the whole of the guns, ten in number; and during that time the Mahrattas plundered the camp with their usual skill. The amount of the enemy was not exactly ascertained. By the account of the prisoners it exceeded 10,000 men. This is allowed to have been one of the most spirited and brilliant actions of the war. The men

were under arms, and actively employed, without refreshment, for six and thirty hours. Though it was dark, when they returned to the camp, the Bhow sent to inform Captain Little that he was coming to embrace him. The Captain excused himself on account of his fatigue and the lateness of the hour; but was not prevented, says Lieutenant Moore, from visiting his wounded officers. The Bhow was at head quarters by sun-rise the next morning, complimenting the detachment in the most flattering terms.

The siege of Simoga was now undertaken without fear of interruption. A battery of five guns was ready to open on the 2nd of January, and by noon the next day had effected a breach nearly practicable; when the garrison, on condition of security to private property, offered to surrender. It may be remarked that they required the guarantee of the English detachment. Such is the depravity of Hindu morals, that it is no affront, either to a nation or an individual, to be charged with the want of faith; and the Bhow totally overlooked the opprobrium which the enemy scrupled not to cast upon him and his nation. The place was capable of a good defence; but the garrison were dispirited by the defeat of the protecting army, and the greater part of them had deserted.

The valuable country which the Bhow had thus conquered, and which he regarded as an accession to his own personal dominions, so raised his ambition, that he aspired to the conquest, or at any rate the plunder of Bednore. After remaining inactive in the neighbourhood of Simoga till the middle of January,

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he arrived by a few marches, through a country in great part covered with jungle, at Futteh Pet, one of the great barriers of the province of Bednore; and passing this fortress, without any serious attempt upon it, he sent forward a detachment, which began on the 28th to cannonade Bednore. It was recalled, however, the following day; when the army, to its great surprise, received orders to retreat. To stop the progress of the Mahrattas, Tippoo had detached an army, under one of his best generals, who had already advanced as far as Simoga and taken it. The Bhow was by no means desirous of meeting an equal enemy in a close country, in which cavalry could not advantageously act. He crossed the Toom near Simoga on the 10th of February, and the Budra the next day near Binkapoor: he obtained the fort of Adjampoor by capitulation on the 12th: and he joined the allies on the 10th of March, before Seringapatam.

Recovered in health, reinforced, and equipped, the Bombay army, under General Abercromby, left their cantonments in the neighbourhood of Tellicherry; assembled at Cannanore on the 23rd of November; and on the 5th of December began their march for the Poodicherrum Ghaut. Vast labour was necessary to repair the road, which the torrents of the monsoon had destroyed. Three weeks, of constant exertion, barely sufficed to bring up the heavy guns; but on the 18th of January, the whole of the artillery, amounting to eighty-six carriages, of which eighteen were heavy, with the usual proportion of ammunition, and forty days' rice for the men, was at the top of the pass. Lord Cornwallis had de-

pended upon the army of Purseram Bhow, with the three battalions of British Sepoys, under Captain Little, to cross the Cavery, and join Abercromby; for the purpose of enabling him to bring on his heavy artillery, to march without dread of Tippoo, and to complete the investment on the southern side of Seringapatam. Disappointed in this expectation, by the avaricious expedition of the Mahrattas to Bednore, he sent his orders to General Abercromby to place his artillery in a secure post at the top of the Ghauts, and hold his corps in readiness to move at the shortest notice, lightly equipped. Abercromby had already performed his first march from the top of the Ghauts, on the 22nd of January, when these orders arrived; he had, therefore, to send back the heavy part of his guns, and encamped at the bottom of the Seedaseer Ghaut, to wait for future instructions.

During the proceedings of the confederate armies, the operations of Tippoo were but feeble; and betrayed the inferiority of his means. Toward the end of June, he sent a detachment, as well to attack Coimbetore, as to raise contributions and collect supplies in the province. Lieutenant Chalmers had been left in the command of the place; with a company of topasses, and a battalion of Travancore Sepoys, commanded by a French officer, named Migot de la Combe, in the service of the Raja. The heavy guns, ammunition, and stores, had been removed from Coimbetore, as a place not sufficient to stand a siege, and placed in the fort of Palgaut, or Palacatcherry, where Major Cuppage, who was now the commanding officer in the province, established his

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head-quarters. As it was convenient to retain Coimbetore for the fiscal business of the province, a few bad guns, not worth removing, and a small quantity of ammunition, were left in it; with directions to the commandant to fall back to Palacatcherry, if a powerful enemy should appear. The party who were now sent against Coimbetore appeared not to Lieutenant Chalmers sufficiently formidable to remove him from his post. After a siege, however, of some duration, a breach was made, and on the 11th of July the enemy attempted to storm. It was with great difficulty that order was preserved among the Travancore troops; but the zeal of their French commander ably seconded the exertions of the Lieutenant, and the enemy were repulsed with great slaughter. Major Cuppage, who advanced with expedition from Palacatcherry, completed their discomfiture, taking the two guns with which they had breached the fort, and pursuing them till they crossed the Bowani.

At the time of this transaction the Sultan with his army had made a movement towards the north; with the intention, as was at first supposed, of proceeding against Purseram Bhow in the province of Chittledroog. This alarmed Cornwallis so much, that he thought it necessary to make a few marches in the same direction, for the purpose of recalling the hostile army. But Tippoo, having covered a large convoy which he expected from Bednore; having routed, by a detachment, a corps of the army of Purseram Bhow, left by that chief, on his route to Sera, for the purpose of masking Mudgerry; and having terrified into flight the garrison thrown by

the Mahrattas at the same time into Great Balipoor, returned to the neighbourhood of his capital. As soon as there, he despatched Kummer ud Deen Khan, his second in command, into Coimbetore. Beside the army which this General led into Coimbetore; a light party, chiefly horse, proceeded with him till after he descended the Gujelhutty pass, and then crossing the Cavery, proceeded through the Tapoor pass; and with great secrecy and despatch conducted a new Kelledar, with a reinforcement, to Kistnagherry; the only place of importance which Tippoo now possessed, between Bangalore and the Carnatic. This service performed, they remained to ravage the country; and threatened interruption to the British convoys.

The Khan arrived before Coimbetore, towards the end of October, with a force, of which the estimate, at 500 regular cavalry, 8000 regular infantry, and fourteen pieces of cannon with a body of irregulars, both horse and foot, is probably overcharged. Lieutenant Chalmers, reinforced by the two heavy guns which were taken from the enemy's routed detachment, and Lieutenant Nash, with a company of regular sepoys from Palacatcherry, expected to hold the place till relieved by Major Cuppage. The want of ammunition was the chief defect, supplies of which the Major repeatedly sent by Sepoys, who contrived to enter during the night. On the 22nd of October Cuppage marched from Palacatcherry with three battalions of Sepoys, six field-pieces, and two Travancore battalions without guns. The enemy determined, with their superiority of number, to anticipate his approach; and met him at the

BOOK VI CHAP. 4. 1791. distance of about six miles from Coimbetore. The Khan appeared to decline engaging; but made a dexterous movement to the right of the English detachment, and placed them in such a position that it was necessary for the commander either to force his way to Coimbetore, leaving the Khan behind him, and the road open to Palacatcherry, or to fall back for the security of that more important post, and leave Coimbetore to its fate. Thus outgeneraled, the British officer, considering, that if the enemy got possession of the strong and narrow defile which led to Palacatcherry, it might be no easy task to return; considering also that a large convoy from Madras, of bullocks for the use of the Bombay army, was now on its way, and might be taken by the enemy if they got between him and the pass; and not thinking himself sufficiently strong to spare a detachment to take possession of the defile, when, allowing the enemy to pass, and following them close into the defile, he might have taken them between two fires, made up his mind to retreat. On seeing the English begin to recede, the enemy rapidly advanced to the attack; showers of rockets attempted to break the detachment; and the cavalry approached with boldness to the charge. They were received by the flank companies of the rear guard, and several times repulsed; when the Khan, unable to prevent the march of the column, proclaimed a victory and returned to Coimbetore. The ammunition of the place was nearly expended; a breach was made; and all hope of relief had expired. Lieutenant Chalmers capitulated on the 2nd of November, on condition that private property should

be secured, and the garrison sent to Palacatcherry, on their parole. The capitulation was violated. The garrison were detained as prisoners, till Tippoo was consulted; and he ordered them to Seringapatam.

It is worthy of mention that, about the middle of January, notwithstanding the powerful armies with which the Carnatic was defended, and the enemy pressed in the very centre of his dominions, a party of horse suddenly appeared in the neighbourhood of Madras; and made some trifling depredations, but ventured not to remain beyond the space of a day. Madras was thrown into the most violent alarm; and the gentlemen of the settlement furnished horses to mount a party of troopers, who with another of infantry were sent to the Mount.

Tippoo, at this time, renewed his offer to send vakeels for the settlement of disputes; but his messengers were immediately sent back, with an answer that no embassy would be admitted, so long as the prisoners taken at Coimbetore were retained in breach of the capitulation.

In the beginning of January the army was encamped in the neighbourhood of Ootradroog, and only waited for the arrival of the heavy cannon, and the junction of the Hyderabad army, to set forward on the grand design.[1] The Hyderabad army had

[1] Colonel Wilks accuses the Mahrattas, rather than the Nizam, of causing delay. "The demonstrations of Tippoo Sultaun," he says, "to the northward had induced his Lordship to request, that Purseram Bhow should advance simultaneously on the direct road from Sera, as well to prevent a detachment to Goorumconda, which actually occurred, as to form a column on his right to unite at the proper time with General Abercromby: but the general purposes of the war were of secondary consi-

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not yet taken Goorumconda, and was obliged to leave the place with a party behind to retain the pettah and continue the blockade. On the 25th of January, when the Hyderabad army was approaching the British camp, the Governor-General went out to receive, in pomp, the Prince who was placed at its head.

As the great men of the East would hurt their dignity, if they did not exceed the time of their appointment by several hours, the British commander spent a tedious day in attendance, and only met with his Prince, as the evening approached.

Hoolydroog, ten miles in advance, had been re-occupied by the enemy; and as it was inaccessible to assault, and had been repaired with great diligence, it might have been expected, though small, to make a serious defence. But when the Kelledar was summoned by Colonel Maxwell, and was told, that the attack would instantly commence, he was so dismayed as to surrender without resistance.

Before the march, the eastern chiefs were invited to an imposing spectacle, that of the British army in battle array; at which they gazed with childish, more than rational curiosity.[1]

deration in all the movements of this chief: he had a political illness which produced an embarrassing correspondence, and it was the necessity of delay arising from this circumstance which induced Lord Cornwallis to occupy the time intended for advance in the siege of Savendroog, which he had determined to leave in his rear from the great improbability of being able to reduce it; and thus in the actual result the delay was useful." Historical Sketches, iii. p. 212.

[1] This is probably a specimen of our author's besetting prejudice. It does not appear that he has any grounds for imputing childishness to the "Eastern" chiefs, except their being "Eastern." The only intimation of

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On the first of February the combined forces began to advance from Hoolydroog. The English army, as usual, moved off at break of day. A change, of sufficient importance to require a description, had been introduced into the order of the march. In former wars, and at the beginning of the present, the army advanced in one column, with the battering train in the rear; which was apt to fall behind so far that sometimes it reached not the ground of encampment before the following day. It was next tried in the centre of the column; but in that case it separated the wings, and produced still greater delay. The succeeding experiment was, to march with it in front: an improvement; as it had the first of the road, and being parked on the leading flank, got earlier off the ground, and without interruption from the line. As the train however became enlarged, it occupied so great an extent of road as to draw out the line of march to a very inconvenient length; and the plan was then adopted of marching with it, on one road, and the troops and light guns on another road, on its flank. The success of this experiment suggested an additional improvement. After wheel-carriages became very numerous, and prolonged to an inconvenient length the line of the march, a third road was taken by vehicles of that description on the

the kind that is found, occurs in Major Dirom, who observes, that there was a striking contrast "between the good sense of our generals on horseback, and the absurd state of the 'chiefs' looking down from their elephants." The only candid interpretation of which is, that the back of a horse is a more appropriate plaoe for a general, than the back of an elephant; an opinion natural enough in an English officer, and possibly rational enough, but implying no want of rational interest in the display of military power, which was witnessed by the native princes from their howdahs.—W.

other flank of the train. The English army, according to this arrangement was seen in three columns; 1. The battering guns, tumbrils, and heavy carriages, on the great road, in the centre; 2. The line of infantry and field-pieces, parallel to the first, at the distance of about one hundred yards, on the right flank, which was nearest to the enemy; and 3. On the left of the battering train, all the lighter part of the store-carts, with the baggage conveyances, and the followers of the camp. The line of march was, in this manner, shortened to one-third of the space to which a single column would have drawn it out; and every part of the moving body was much nearer protection.[1]

The armies of the allies followed, at their usual hour, and in their usual confusion.

The last day's march, on the 5th of February, over the barren heights which lie to the north-east of Seringapatam, afforded the allies a view of the Mysorean capital, and the enemy encamped under its walls. They took up their ground, across the valley of Milgotah, at the distance of about six miles from the Sultan; a body of whose horse had hovered about the army from nearly the beginning of the march; but with little power of giving annoyance.

Separated from the chain of hills which the army had immediately crossed, there stood, at a little

[1] It had also been found an improvement of the greatest importance, to harness the bullocks to the heavy guns four a-breast, instead of two: carrying back the chain by which they drew, to the axle of the gun instead of that of the limber. In the first campaign, a few eighteen pounders created the greatest difficulty and delay. At this time, the battering train moved with a facility not much less than that of the rest of the army.

distance on the plain, a cluster of high rocks called the French rocks, with a large adjoining tank, or reservoir of water. The space between these rocks, and the hills, was occupied by the line of the British, fronting the Sultan; the hills affording protection on the left, and the French rocks affording not only protection on the right, but covering from the view of the enemy a part of the line which extended behind them. The reserve encamped about a mile in the rear, facing outwards, with the stores and baggage in the interval between. The armies of the Hyderabad Prince and the Mahrattas, were somewhat further in the rear, the one on the right, the other on the left of the British reserve.

After his arrival before Seringapatam, Lord Cornwallis wrote immediately to General Abercromby, to march, and occupy as strong a position as he could find on the south side of a particular ford, which had been described as one of the best on the river, at a distance of nearly forty miles from the Sultan's capital. It was the intention of the English commander to employ the troops of the Nizam, along with the English battalions attached to it, in the service originally destined for Purseram Bhow, namely, that of forming a junction with General Abercromby, and completing the investment of Seringapatam: and the minister of the Nizam, who, under the nominal authority of the Prince, possessed in reality the whole command of the army, showed a real desire to second the wishes of Lord Cornwallis: on taking cognizance, however, of the state of this part of the confederate force, the Commander-in-Chief discovered, that the Hyderabad minister was so little qualified for the business he was sent to perform,

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that he could not, if removed from the English markets, and the northern communication, provide, even for a few days, supplies to his troops. Greatly displeased with Purseram Bhow, whose army was well qualified to have yielded assistance, either in completing the investment of the capital, or making head against the corps with which Tippoo might endeavour to interrupt the supplies of the besiegers, Lord Cornwallis wrote letters as well to Poonah to complain of his conduct, as to himself to accelerate his approach. As the armies of the Nizam and Hurry Punt could not act on detached service, they remained completely useless and unemployed.

Seringapatam is situated on an island, formed by two branches of the Cavery, which, after separating to a distance of a mile and a half, again unite, about four miles below the place of their separation. Around Seringapatam ran the usual hedge, called the bound hedge, composed of the bamboos, and other strong and prickly shrubs of the country, forming a rampart of considerable strength. On the northern side, that on which the confederate army had taken up their ground, an oblong space of about three miles in length, and from half a mile to a mile in breadth, was enclosed between the hedge and the river. In this enclosure Tippoo was encamped. It contained the most commanding ground on that side of the fort; and was further guarded in front by a large tank or canal; by rice-fields which it watered; and by the windings of a river called the Lockany, which crossed the line of the British camp, and intersected the intermediate valley by three streams, of which one fell into the Cavery, near the eastern point of the island. To the

natural strength of this position was added the assistance of six large redoubts erected on commanding ground; of which one, called the Mosque redoubt, situated at the western extremity, on an eminence somewhat advanced beyond the line of the rest, and in the corner of the bound hedge which was here carried out to surround it, was a post of great strength, and covered the left of the encampment. The mountainous range which protected the left of the British line, extended close to the river at the eastern end of the island; and by a hill called the Carrighaut, the fortifications of which had been lately improved, together with the branch of the Lockany which entered the Cavery at its base, afforded strong protection to the right of the Sultan's encampment.

In the western angle of the island was situated the strong fortress of Seringapatam. The eastern part was fortified towards the river by redoubts and batteries, connected by a strong intrenchment with a deep ditch. The fort and island therefore constituted a second line which supported the defences of the first; and afforded a secure retreat, as from the outworks to the body of a place. Heavy cannon in the redoubts, and the field train disposed to the best advantage, to the amount of 100 pieces of artillery, defended the first line; and at least three times that number were employed in the fort and island. The Sultan's army was supposed, at a low estimation, to amount to 5000 cavalry, and from forty to fifty thousand infantry. He commanded the centre and right of his line in person, and had his tent pitched near the most easterly of the six redoubts, which

BOOK VI CHAP. 4. from that circumstance was called the Sultan's redoubt.

1792. Tippoo, having abandoned the design of keeping the field against so powerful a combination of foes, had directed his attention to the fortification of this position, and the improvement of his defences in the island and fort. His plan of defence was founded on the hope of being able to protract the siege, till the want of supplies in a country already exhausted, or at any rate the recurrence of the monsoon, should compel his enemies to retreat. He was probably the more confirmed in the anticipation of this result, because it was the same expedient by which his father had baffled the potent combination by which he was attacked in 1767.

The British troops had just been dismissed from the parade, at six o'clock on the evening of the 6th, when they were directed to fall in again with their arms and ammunition.

Every thing was in its proper place at half an hour after eight o'clock, when the order was given to march. The evening was calm and serene; the moon shone bright; and the troops advanced in silence. The security of the northern supplies, and the difficulty of crossing the river with all the stores and heavy artillery, pointed out the necessity of dislodging the enemy. But his position, every where protected by the guns of the fort, or the batteries of the island, was so strong, that in an open attack in daylight, the event was doubtful, the loss of a great number of the best soldiers of the army unavoidable. The night was therefore chosen, and an early night for the greater certainty of surprise. As guns could

be of little service in the dark, and the state of the ground made it difficult to convey them, it was resolved that none should be employed.

The army was formed into three columns: The right column composed of two European, and five native battalions, under the command of General Medows: The centre column, of three European, and five native battalions, led by the Commander-in-Chief: And the left, of one battalion of European, with three of native troops, under the command of Colonel Maxwell.

According to the plan of attack, the centre column, under the Commander-in-Chief, was to penetrate the centre of the enemy's camp, while the columns on the right and the left were to take possession of the posts which defended the enemy's flanks: And the front divisions of all the three columns, after carrying what was immediately opposed to them, were to cross with the fugitives, and endeavour to get possession of the batteries on the island. So early an attack, before the junction of the Bombay army, and during the darkness of the night, was probably unexpected by Tippoo. The allies, to whom the plan of the attack was not communicated, till after the columns had marched, were in the greatest consternation. To attack with a handful of infantry, and without cannon, the whole of Tippoo's army in a fortified camp under the walls of his capital, appeared to them an extraordinary attempt. And their surprise was increased, when told that Lord Cornwallis in person commanded the division which was to penetrate the centre of the enemy's camp, and had gone

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to fight, as they expressed it, like a private soldier.

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When the columns were on the march, the camp was struck, and the baggage packed; the corps of artillery, and the quarter and rear guards of the line, stood to their guns and arms; while the reserve, consisting of the cavalry and the 7th brigade, were drawn up in front of the camp, to act as occasion might require, or to pass a night of the keenest anxiety.

Between ten and eleven o'clock the centre column touched upon the enemy's grand guard, who were escorting a party of rocket-men for the annoyance, during the night, of the English camp. The horsemen galloped back to the line; but the men with the rockets remained, and endeavoured by discharging them to harass the march. At the time when the rocketing began, the left division were ascending the Carighaut hill, which soon became illumined with the discharge of musquetry. The centre column (the men, as soon as discovered, lengthening the step, though silence was not broken by a single voice, and in one minute moving at double the former pace) gained the hedge, and entered the enemy's lines, about fifteen minutes after the return of the horsemen had communicated to the enemy the alarm. The right division, which had a more difficult march, and was misguided to a point more distant than was intended, entered the bound hedge about half-past eleven, when the discharge of cannon and musquetry showed that the rest of the troops had every where closed with the enemy.

Of the centre column, 3700 firelocks, the front corps had for its primary object to pass into the island with the fugitives: the corps in the centre was first to clear the right of the camp, and next, if possible, to gain the island; while that in the rear was to form a reserve under Lord Cornwallis, in a position where he might support the other two, and wait the co-operation of the columns on his right and left. The head of the column penetrated the hedge, under a heavy but ill-directed fire, both of cannon and musquetry; and as it advanced, the enemy gave way. The leading companies, the Captains of which had been instructed to charge themselves, each particularly with the men of his own command, and, in getting to the fort, to regard the celerity more than the solidity of their movement, pushed their way directly to the river. Amid the entanglements of the rice-fields, and the darkness and hurry of the night, the front companies separated into two bodies. The party which first reached the ford, crossed without opposition under the very walls of the fort. Captain Lindsay pushed into the sortie in hopes of entering the gate with the fugitives; but it had been shut immediately before, and the bridge drawn up. The second party reached the same ford about five minutes after the first had gained the opposite side. The passage was now more difficult, for the ford was choked up by the crowds of the enemy pressing into the island. No resistance was, however, attempted, and though some guns were discharged from the fort, they were not directed to the ford. The first party marched across the island, and took post near the southern side. Colonel Knox, who commanded the second,

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proceeded towards the eastern angle of the island, near which there was a pettah, or town, called Shaher Ganjam, with lines and batteries towards the river commanding the eastern ford. The pettah was hardly carried, when a firing began from the batteries on the river. It indicated that the troops on the left had penetrated the enemy's camp, and, it might be, were forcing their way into the island. The Colonel despatched the greater part of his corps to take these batteries in reverse. As soon as the men came down upon them in the rear, where they were open, the enemy, who could not judge of their numbers, and trembled at the bayonet in European hands, abandoned the works and dispersed.

Beside these two parties, a third, consisting chiefly of the seven battalion companies of the fifty-second regiment under Captain Hunter, came to the river soon after the party of Colonel Knox, but at a place about half-way between the two fords, where they crossed, and took post in what was called the Raja's garden. Ignorant that any other troops had passed into the island, Captain Hunter resolved to remain in the garden till a greater force should arrive, or circumstances recommend an enterprise. He soon, however, perceived that his post, being exposed to the guns of the fort, would not be tenable at break of day; and endeavoured, but in vain, to send intelligence of his situation to Lord Cornwallis. After he had been two hours in the garden, a part of the enemy brought two field-pieces to the opposite bank; when he plunged into the river to cross and attack them before the guns were unlimbered for action; succeeded, though not without loss from a heavy fire

both of musquetry and cannon; passed through the enemy's camp without opposition; and joined Lord Cornwallis at a critical moment.

Such were the operations of the front division of the centre column; and such was the first part of the operations on the island.

One of the native regiments of the first division lost its commander in passing the hedge, and fell into some disorder in taking ground to the right. The centre division hastened to its support, and thence proceeded to the left, to attack the right wing of the enemy. On approaching the Sultan's redoubt, a large body of horse opposed themselves. Major Dalrymple formed the seventy-first regiment, and gave orders to fire one round, to load and shoulder. On the clearing up of the smoke, the horse were seen at a distance scattered over the field. The corps proceeded to attack the Sultan's redoubt; but on mounting the walls, and entering the embrasures, found it abandoned. Leaving two companies of the seventy-first regiment, a detachment of artillery, and fifty sepoys for its defence, they advanced and completed the defeat of the enemy's right, which had been turned by the column of Maxwell.

The rear division Lord Cornwallis formed near the Sultan's redoubt, and waited, in anxious expectation, for the column of General Medows from the right. About two hours before day-light, he was joined by Captain Hunter, after his return from the island. The men had scarcely time to replace their cartridges, which had been damaged in the river, when a large body of troops, part of Tippoo's centre and left, who had recovered from the early panic of the

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night, made a disposition, and advanced with a considerable degree of order and resolution. The party, animated by the presence of the Commander-in-Chief, returned with coolness the fire of the enemy, and charged them with the bayonet on their approach. They returned several times, however, with great bravery, to the attack, and were not finally repulsed till the day was about to break. Cornwallis then ordered his men to retire towards the Carighaut Hill, that they might not be exposed to the fire of the fort, or surrounded by the enemy at day-light; and was met by General Medows, hastening to support him.[1]

It was the intention of the Commander-in-Chief, that the column of the right, 3300 firelocks, under General Medows, should penetrate the line about half a mile east from the mosque redoubt, which was not intended to be attacked, as it was understood to be very strong, stood at a considerable distance from the enemy's front, and would no doubt be evacuated, if the rout of the army was completed. By a mistake of the guides,[2] the column was led to a point further west than that which was intended, and at no considerable distance from the formidable redoubt. On approaching the hedge, one battalion of the front division was desired to make a circuit to the right,

[1] The Commander-in-Chief paid a heart-felt compliment to the spirit and fidelity of General Medows. When the enemy began to attack him, "If General Medows," said he, "be above ground, this will bring him." The harmony of these leaders is one of the finest features of the campaign: the zeal with which Medows strove to perform the duties of the second, after being deprived of the honours of the first command; and the pleasure which Cornwallis displayed in proclaiming the merit of General Medows, and the importance of the services which he received from him.

[2] By an ambiguity of the orders, says Colonel Wilks, iii. 220.

to call the attention of the enemy, while the column penetrated, and having done so, left two battalions as a reserve, just within the hedge. Colonel Nesbit, who led the column, the station of the General being in the centre, agreeably to the orders of the Commander-in-Chief, finding no opposition, nor any camp, the extremity of which was at a considerable distance to the east, and perceiving one of the posts protecting the enemy's left which it was the business of the column to subdue, wheeled his division to the right, and ascended the hill of the redoubt. No opposition was made till the leading division crossed the canal, and was approaching the redoubt, when they were received by a heavy discharge of musquetry and grape. Part of the column rushed forward, gave the enemy their fire, and drove them from the covert way. But the inner works were strongly manned; many of the ladders were missing; and several ineffectual attempts were made to pass the ditch, before a path was fortunately discovered which led from the end of the mosque into the redoubt. The redoubt was carried after a severe conflict, in which its commandant, and nearly four hundred of the enemy, lost their lives; with eleven officers, and about eighty men, killed and wounded on the part of the assailants. Tippoo's European corps, commanded by Mon. Vigie, had been stationed in the angle of the hedge in front of the redoubt; but their attention was attracted by the party making the circuit without the hedge, till finding themselves surrounded, they broke, and made their escape.

Leaving a force sufficient for the defence of the post, General Medows commanded the troops to be again

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formed in their original order; and was impatient to proceed to the real point of attack. Several other redoubts remained on the left of the enemy's position; but he held it more adviseable to leave them behind, than waste additional time. Before he was in a condition to march, the firing had ceased in every part of the line; and finding it very difficult, from swamps and ravines, to march within the hedge, he proceeded to the outside, and marched along its front to the Carighaut Hill: where he had not long remained, when his attention was fixed by the firing of the attack upon the Commander-in-Chief.

The object of the left column of the British army, 1700 firelocks, was, to clear the Carighaut Hill, to join in the attack upon the right of the enemy's encampment, and make their way into the island. The attack on the hill was so well conducted, and the surprise of the enemy so complete, that this post, strong as it was both by nature and art, made but a feeble resistance; the walls were instantly scaled; and the loss was inconsiderable. In descending, however, towards the camp, the column had to sustain the fire of the right of Tippoo's line; and were galled by a party who enjoyed the shelter of a watercourse at the bottom of the hill. They bore down every obstacle, and proceeded through the camp, till met by the centre division of the Commander-in-Chief. To pass into the island was the next exploit. A party plunged into the river opposite to the batteries, which, opening upon them, had called the attention of Colonel Knox, and they crossed with considerable difficulty, as the water was deep. Their cartridges were rendered useless; and they must

have trusted to their bayonets to clear the batteries and lines, had not the enemy, at that critical period, been dislodged by Colonel Knox. The rest of the column moved higher up the river, in search of a better ford, and joined a part of the centre column, which was crossing, under the command of Colonel Stuart. These corps united at the eastern end of the island; and, towards morning, were joined by the party which first had entered the island, and taken post on the southern side. The separate position of this corps, as well as that of the corps under Captain Hunter, in the Raja's garden, had not been without their advantage; as they had distracted the enemy's attention, and checked him from reinforcing his positions on the river, or making a speedy effort to dislodge the assailants before they could establish themselves in force upon the island.

Such were the operations of the night. The Sultan had just finished his evening's repast, when the alarm was given. He mounted; and before he had time to receive intelligence of the nature and quality of the attack, not only perceived, by the mass of the fugitives, that the centre of his camp was entered, but discovered, by the light of the moon, an extended column passing through his camp, and pointing directly to the main ford. As this threatened his retreat, he went off with great celerity, and, having barely time to cross before the English, took his station on the part of the fort best calculated for the view, and there continued, issuing his commands, till the morning. In the retreat a great number of his troops deserted. One corps, 10,000 strong, con-

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sisting of the persons whom he had forcibly removed from Coorg, wholly disappeared, having escaped to their native woods: and a number of Europeans, in his service, from which he gave no allowance to depart, seized this opportunity of making their escape.

The day broke only to vary the features of the conflict. The most easterly of the six redoubts, the Sultan's; and the most westerly, the mosque redoubt, were taken; but the intervening four were in possession of the enemy. The scattered parties collected themselves. And the guns of the fort, which, during the night, had been kept silent by order of the Sultan, lest they should persuade the troops in camp that the fort was attacked, and make them imitate the example of the deserters, were opened as soon as daylight fully appeared, and fired upon the assailants wherever they could be reached.

The eastern fork of the two branches of the river which surround the island, Tippoo had occupied with a palace and gardens. The English took up a strong position in front of the gardens, completely across the island, where they commanded the ford to the Carighaut Hill, and occupied the lines and batteries by which it was guarded. A little after day-light a body of the enemy's infantry approached, under cover of old houses and walls. Their fire was but feebly returned; because the ammunition of the English troops had been nearly expended during the night, or damaged in the river. The Commander-in-Chief, who had taken his station upon the Carighaut Hill, whence every operation

could be seen, immediately detached several corps to support them; and, upon the arrival of this reinforcement, the enemy withdrew: Colonel Maxwell, thinking that his services, no longer necesssary in the island, might elsewhere be useful, left the troops to the command of Colonel Stuart, and joined Cornwallis on the hill.

In the mean time the enemy were assembling from every quarter for an attack on the Sultan's redoubt, which it was deemed expedient to recover, before the serious attempt was made to dislodge the English from the island. This redoubt was nearly of the same size and construction with that which had been stormed by General Medows at the left of the enemy's position; it stood, however, within reach of the guns of the fort; and the gorge was left open to the fort and island, to keep it untenable by an enemy. The corps which had been left in it amounted to about 100 Europeans, and fifty Sepoys, with their officers. And as the army was kept at a distance by the cannon of the island, the fate of the post was left to the constancy of its defenders.

An attempt was made to shut up the gorge, by some broken litters, and the carriage of a gun. This was no sooner perceived by the fort, than it opened three guns on the gorge, and two field-pieces were advanced to certain rocks, which stood at a little distance from the redoubt, and sheltered the enemy. The slender barrier was soon destroyed, and the works considerably impaired, when the enemy advanced to the assault. They were repulsed with slaughter, and retired to their station behind the rocks. Considerable loss, however, was sustained in

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the redoubt. The commanding officer fell; and as the day was extremely sultry, the wounded men were dying for want of water, of which not a drop remained in the place. Great apprehensions, for a time, prevailed, of the failure of ammunition, with which the party had been scantily supplied. But happily, two of the bullocks that carried spare ammunition for the regiments, were found astray in the ditch. Scarcely had the men filled their cartridge-boxes, when a body of cavalry, at least two thousand strong, were seen advancing to the redoubt; of whom three or four hundred dismounted just without musket-shot of the redoubt, and, drawing their sabres, rushed toward the gorge. The fire of the defenders was ready, given coolly, and brought down so many, that the rest fell into confusion, and retired. The lapse of an hour brought forward another attack. The troops which now advanced, supposed to be the remains of Lally's brigade, were headed by Europeans; and the English prepared themselves for a more dreadful contest than any which they had yet sustained. They were disappointed; for this party had advanced but a little way from the rocks, when, a few of them falling, they hesitated, got into disorder, and went off.

This was the last of the enemy's attempts. The redoubt was a scene of carnage. Two officers, and nineteen privates, lay dead upon the ground: three officers, and twenty-two privates, grievously wounded, were perishing for assistance; and the rest were nearly exhausted with want and fatigue. About four in the afternoon, the fire from the rocks began to slacken, and the enemy withdrew.

The battle every where seemed now to be given up. The enemy, however, was only preparing for his attack on the troops in the island. A considerable force advanced, about five o'clock, which was without much difficulty repulsed. But the English received information, that a desperate attempt would be made to drive them from the island during the night. They made their dispositions for defence; and the troops lay upon their arms in anxious expectation of the assault; but the morning dawned without an alarm.

In the preceding evening, Lord Cornwallis issued, in the shape of general orders, a flattering compliment to the army; and seldom has a tribute of applause been more richly deserved. The plan of the attack has the character of good sense upon the face of it, and is stamped with the approbation of military men, while it is evident to all, that the conduct of the army in its execution, whether intellect or bravery be considered, was such as it would not be easy to surpass. The only point of failure regarded, as usual, the article of intelligence. The localities of the quarter against which General Medows was directed, were ill understood; and hence arose his defect of success.

The total of killed, wounded, and missing, according to the returns of the British army, was 535. The loss of the enemy was estimated at 4000 slain; but the desertions were the principal cause of his diminution of force. His troops were withdrawn from the redoubts on the north side of the river, during the night of the 7th; and on the morning of the 8th, the remains of his army were collected,

BOOK VI CHAP. 4. 1792. the infantry within the works of the fort, the cavalry and baggage on the south side of the river towards Mysore.

Arrangements were now made and executed for besieging the fort. Three European regiments, seven battalions of sepoys, a captain's command of artillery, were established in the island; and occupied the position taken originally by Colonel Stuart, in front of the Sultan's gardens. While the fort occupied the western extremity of the island, and with its works comprehended the space of a mile, the Sultan's new palace and gardens covered a similar extent at the eastern extremity. Previous to the war, the space between these gardens and the fort, was occupied by the houses and streets of the most flourishing capital at that time in the dominions of any native prince in India. With the exception of the pettah, or suburb, already mentioned, which constituted the eastern extremity of the town, the rest had all been destroyed, to make room for the batteries of the island, and to form an esplanade to the fort. The gardens in which the Sultan delighted, laid out in shady walks of large cypress trees, and enriched with all the vegetable treasures of the East, were cut to pieces, and destroyed, to furnish materials for the siege; while the gorgeous palace adjoining, was converted into an hospital for the sick.

On the evening of the 8th, Tippoo sent for Lieutenants Chalmers and Nash, whom he had retained in contempt of the capitulation of Coimbetore. They found him sitting under the fly of a small tent on the south glacis of the fort, very plainly dressed, and

with a small number of attendants. He gave them presents, and charged them with letters to Lord Cornwallis, on the subject of peace, which he gave them assurance he had never ceased to desire. Contrary to the usual custom of Tippoo, their confinement had not been cruel.

At day-break on the 10th, the cavalry of Tippoo, who had crossed the river about six miles below the island, got round undiscovered to the rear of the left wing of the English camp, and advancing between the position of the English, and that of the Hyderabad army, were taken by the English piquets and rear guards for a part of the confederate troops. On passing the park of artillery, they asked some of the camp followers for the *Burra Saib* or commander; who, supposing they meant the officer of artillery, pointed to his tent. They galloped towards it immediately, drawing their sabres; but receiving the fire of a party of sepoy draughts and recruits who turned out with great alacrity, they dispersed, and recrossing the hills, disappeared. The incident produced alarm in the British camp, as a blow struck at the life of the Commander-in Chief, whose popularity was deservedly great.

Unable to accomplish his design of strengthening General Abercromby by the junction of the Mahratta or Hyderabad armies, Lord Cornwallis directed him to cross the river, and join the main army, on the northern side. He began his march on the 8th, sending back his sick to the hospitals at Poodicherrum, and leaving a detachment, strongly posted at the Seidaseer Ghaut. On the 11th, he crossed the Cavery at Eratore. A party of the enemy's horse,

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breaking in upon the baggage, as it was crossing a small river on the 13th, captured a part of it, and continued to infest the march for the remainder of the day. A still larger body appeared in front on the 14th, when the army was halted and formed for action: The supposed enemy was a strong detachment which Lord Cornwallis had sent to protect this army in its approach. On the 16th, without further interruption, it gave to the force before Seringapatam, an accession, fit for duty, of 2000 Europeans, and double that number of native troops.

To this junction Tippoo intended a more serious opposition. He detached the whole of his cavalry on the evening of the 13th; but they sustained a rencounter with the protecting detachment, and were afraid to proceed.

The fort of Seringapatam is of a triangular shape, to correspond with the ground on which it stands; two sides, and those the longest, being in this manner, defended by a deep and broad river, and only one, that towards the island, without a natural obstacle to oppose an attack. This, of course, was the side which had received the strongest fortifications. This was covered with strong outworks, and two broad and massy ramparts, one a considerable distance within the other, having flank defences, a deep ditch, drawbridges, and every advantage of modern fortification. Upon a computation of all obstructions, it was resolved, notwithstanding the river, to carry on the English attack on the northern side.

About eight o'clock, on the evening of the 18th, a detachment, consisting of one European regiment and one battalion of sepoys, crossed the south branch

of the river from the island, and making a circuit of several miles, over rice-fields, and broken ground, approached the enemy's camp before midnight. The commanding officer halted, about a mile from the camp, sending forward the party destined for the attack. They entered the camp undiscovered; killed about a hundred troopers, and as many horses, with the bayonet, before the alarm became general; then fired several volleys to keep up the consternation, without losing a single man, without a man's having broken his rank to plunder, and without bringing in so much as a horse. The fort was immediately, on all sides, a blaze of light, as if expecting a general assault; but was afraid of firing, which might hurt its enemies less than its friends.

On the same evening, as soon as dark, the party which was destined to open the trenches marched to the chosen spot; and, before day-light, formed a nullah, which was situated within eight hundred yards of the fort, into a large parallel, having its left flank covered by a redoubt which they constructed, its right defended by a ravine. When Tippoo found that one of the most interesting operations of the siege had been performed without opposition, while his attention was successfully drawn off to another quarter, he opened every gun which could bear upon the works; sent parties of infantry across the river, to harass the troops in flank, and interrupt their proceedings; and attempted, but in vain, to cut off the stream of water which supplied the camp. On the 19th, the Bombay army, under General Abercromby, crossed the river; and though Tippoo went out to

oppose them, at the head of his infantry, successfully invested the south side of the fort, and prepared to carry on the enfilade.

During the 19th, 20th, and 21st, traverses were finished, to connect the first parallel with a large redoubt in the rear; and on the night of the 21st, the line was marked out for the second parallel, two hundred yards in advance; from which, as the ground was favourable, no doubt was entertained that the fort could be breached.

Though no relaxation was admitted in the operations of the siege, Lord Cornwallis, after the release of the prisoners taken at Coimbetore, had listened to the Sultan's application for peace. Tents were pitched for the conferences; which began on the 15th, and were continued on the 16th, 19th, and 21st. With much difficulty could the aspiring mind of the Sultan reconcile itself to the severity of the terms which were demanded. On the 22nd, a severe conflict was sustained by a party of the Bombay army, endeavouring to gain possession of a grove within reach of the guns of the fort. The second parallel was completed on the 23rd; and a very advantageous position obtained for the breaching batteries. A fire of fifty pieces of heavy ordnance might have been directed against the place by the 1st of March: furnaces were prepared for heating shot: the combustible materials of the houses, with which the fort was crowded, could hardly fail, in a few hours, of setting it in flames: at any rate the fire of the breaching batteries was sure of success: the spirit of the army was elevated to the

highest pitch: and General Medows, whose gallantry was always on the alert, had determined to lead in the storm.

The councils of the British army went forward, as wisdom directs, to every contingency; and, even anticipating the case, that a brave and able prince, who had declared his resolution to perish in the breach, and was surrounded by a band of followers, who, like himself, had every thing at stake, might, with the assistance of the rugged channel of a deep and rapid river, be able to defend his principal fortress against an assault, had made arrangements for completing the enterprise by the irresistible operations of a blockade. The army of Purseram Bhow, with Captain Little's detachment, a force sufficient to complete the investment, was now daily expected: Major Cuppage, from the Coimbetore country, with a brigade of 400 Europeans, and three battalions of Sepoys, had ascended the Gujelhutty pass; and without difficulty would take the forts of Ardinelly and Mysore as he advanced: Large supplies collected in the southern countries were ready to ascend the Gujelhutty pass: General Abercromby had perfected a line of communication with the Malabar coast, whence supplies were constantly arriving; Arrangements were made for providing the Mahratta and Hyderabad armies from their own countries: and the Brinjarries maintained such abundance in the camp of Cornwallis, as had not been known since the commencement of the war.

On the morning of the 24th, orders were received by the troops in the trenches, to forbear working, and desist from hostilities. "The soldiers," says Major

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Dirom, "dejected to a degree not to be described, could with difficulty be restrained from continuing their work." The troops of Tippoo fired, both with cannon and musquetry, upon the British troops, for some time after they had ceased; a barbarous bravado, intended to show, that he was the last to resign the contest, and effected peace by the vigour of his defence. The general orders which were issued on the English side concluded with the following passage, not less honourable to the presiding councils, than the most brilliant operations of the war. "Lord Cornwallis thinks it almost unnecessary to desire the army to advert, that moderation in success, is no less expected from brave men, than gallantry in action; and he trusts, that the officers and soldiers in his army will not only be incapable of committing violence, in any intercourse that may happen between them and Tippoo's troops, but that they will even abstain from making use of any kind of insulting expression, towards an enemy now subdued and humbled."

Of the preliminary treaty which Tippoo was constrained to accept, the substantial conditions were, That he should cede one-half of his territories to the allies; pay three crores and thirty lacs of rupees; and give up two of his three eldest sons, as hostages for the due execution of the treaty. Lord Cornwallis, though it required no little patience and discretion to manage his allies, had gained over them so great an ascendency, by a condescending attention to their forms and prejudices, by the dazzling superiority of his power, and by firmness of decision in matters of importance, that they disturbed not the negotiation by urging any points of their own; and professing the

fullest confidence in his discretion, declared their willingness, either to go on with the war, or conclude a peace, and to agree to any terms which should meet with his approbation. BOOK VI CHAP. 4. 1792.

The eldest of Tippoo's sons was about twenty years of age; and had at last taken a considerable share in the war. Of the next two, who were destined to become the hostages, one was about ten, the other eight. The uneasiness which parting with them produced in the Seraglio, occasioned a delay which Cornwallis was too generous to resent: To satisfy the mind of the Sultan, he sent him information by his vakeels, that he would in person wait upon the Princes, as soon as they arrived at their tents, and beside their own attendants, would appoint a careful officer, with a battalion of Sepoys for their guard. Tippoo answered with like courtesy; "That he could by no means consent that his Lordship should have the trouble of waiting first upon his sons; that, having the most perfect reliance on the honour of Lord Cornwallis, it was his own particular desire and request, that he would allow them to be brought at once to his own tent, and delivered into his hands."

On the 26th, about noon, the Princes left the fort. It appeared to be manned for the occasion, and was crowded with people to see them depart. The Sultan himself was on the rampart above the gateway, the fort saluting as the princes went out.

On approaching the English camp, they were received by a salute of twenty-one guns from the park. At their own tents, they were met by Captain Kennaway, the English negotiator, with the vakeels of the Nizam and Mahrattas, and by them conducted

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to the Commander-in-Chief. They were each mounted on an elephant, richly caparisoned, and seated in a silver houdah. They were attended by their father's vakeels on elephants. The procession was led by several camel hircarrahs, and seven standard-bearers, carrying small green flags, followed by 100 pikemen with spears inlaid with silver. Their guard of 200 of their father's Sepoys, and a party of horse, brought up their rear. As they drew near to head-quarters, the battalion of Sepoys intended for their English guard, formed an avenue to conduct them.

Lord Cornwallis, attended by his staff, and some of the principal officers of his army, received them as they dismounted from their elephants, at the door of his great tent; embraced them; led them in by the hand; and seated them, one on each side of himself; when he was thus addressed by the head vakeel: "These children were this morning the sons of the Sultan, my master; They now must look up to your Lordship as a father!" His Lordship assured, with earnestness, both the vakeels and the princes, that they should not feel the loss of a father's care. The faces of the children brightened up, and every spectator was moved. At this interview Lord Cornwallis presented each of them with a gold watch, which appeared to give them great satisfaction. Bred up, as usual with the children of the East, to imitate the reserve and politeness of age, and educated with infinite care, all were astonished to behold the propriety of their deportment. The next day Lord Cornwallis paid them a visit at their tents. They came out to receive him; when he embraced

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them, and led them as before, one in each hand into the tent. They were now more at their ease, and spoke with animation and grace. Each of the princes presented his Lordship with a fine Persian sword; and he made them a present of some elegant fire-arms in return. "There was," says Major Dirom, "a degree of state, order, and magnificence, in every thing, much superior to what we had seen amongst our allies. The guard of Sepoys, drawn up without, were clothed in uniform; and not only regularly and well armed, but, compared to the rabble of infantry in the service of the other native powers, appeared well-disciplined, and in high order." On the morning of the 28th, a royal salute was fired from the fort; which was said to announce the satisfaction of the Sultan at the reception given to his sons.

Considerable difficulties occurred in adjusting the terms of the definitive treaty. During the delay, it was observed, that repairs were actively carried on within the fort; and Lord Cornwallis remonstrated. The Sultan with a disdainful submission replied; "His Lordship was misinformed; but for his satisfaction, if he desired it, he would throw down one of the bastions, to let him see into the fort."

The condition which regarded the Raja of Coorg was the principal cause of delay. Of the great chain of the western mountains, this country occupied the eastern part of the range which extended from the Tambercherry pass on the south, to the confines of the Bednore country on the north. Periapatam was in former times the capital. But after the growth of the Mysore power, the Rajas had lived at

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Mercara, a place more protected by the mountains, about twenty miles north from the Poodicherrum pass.

The Coorgs are considered as related to the Nairs, that singular caste, of high pretensions to rank, on the coast of Malabar. Their country, placed at a medium elevation, between the sultry plains, and the tempestuous tops of the mountains, enjoyed a temperate and delightful climate, with a fertile soil. Hyder laboured for its subjugation in vain, till a dispute about the succession arose between two brothers. Upon usurping the government of the country, Hyder confined the royal family in the fort of Cuddoor, on the eastern frontier of Bednore. Tippoo removed them to Periapatam, on the eastern side of the woods of Coorg. A son of the Raja, then dead, made his escape from Periapatam in 1788.[1]

The discontented and inflexible spirit of the Coorgs, and the cruelty with which they had been treated, had rendered the country a scene of devastation and bloodshed. Upon the appearance among them of their native Prince, they renounced with enthusiasm their obedience to the Sultan; and

[1] The story is told somewhat differently by Colonel Wilks and by Major Dirom. Major Dirom says, that the interference of Hyder between the brothers being admitted, he destroyed the family of the elder brother, carried that of the younger to Seringapatam, and took possession of the country. In the year 1785, the son of that brother made his escape. He had been a prisoner in Seringapatam from his infancy. It was part of the policy or piety of Tippoo, to make converts to his religion; and that by force as well as persuasion. The occasion was not omitted in the case of the young Raja. He was subjected to the painful rite of the Mussulman religion, and enrolled among the *Chelas*, or corps of slaves; of whom he had, though strictly guarded, the nominal command of a battalion, at the time of his escape.

defeated a detachment of his army descending with a convoy to the western coast. Before the commencement of the war between the English and Tippoo, the Raja had repaired to Tellicherry, to form, if possible, a connexion with the English, of whose sentiments with regard to the Sultan he was sufficiently apprized. A regard to the existing treaty made him unable to obtain their consent, at that time, to the engagements which he was desirous of contracting. But no sooner had the war broken out, than he offered his services; and, though his country was miserably drained both of men and resources, he was able, by his intelligence and activity, to aid materially the operations of the Bombay army. The circumstances in which he had been placed by misfortunes had broken many of the fetters which bind the understandings of his countrymen; and he manifested an enlargement of mind seldom witnessed among those matchless slaves of prejudice. Not only had trials invigorated his faculties, but he displayed a generosity, and a heroism, worthy of a more civilized state of society.

Lord Cornwallis included his country by name, in the territory which Tippoo was called upon to resign. The proposal, it seems, excited his astonishment and rage. He had destined the Raja, no doubt, for a conspicuous example of the direful consequences of renouncing his allegiance: The territory of the Raja commanded the best approach to his capital from the sea: And he complained, not without reason, that to demand a territory which approached to his very capital, and was not contiguous to the country of any of the allies, was a real

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infringement of the preliminary articles.[1] Lord Cornwallis, having enjoyed the advantages of the Raja's rebellion, was determined not to leave him at the mercy of his foe. The vakeels of the Sultan returned to the English camp with a declaration that their master refused to see them, or to deliberate on the point. Lord Cornwallis ordered preparations for resuming the siege. The guns were sent back to the island and the redoubts; and the working parties resumed their labours. The army of Purseram Bhow, having at last joined Cornwallis, was sent across the Cavery, to assist General Abercromby in completing the investment of the fort; and exceeded the intentions of the British commander, by plundering the country. The princes were informed of the necessity which had arrived of removing them to the Carnatic. Their guard was disarmed, and treated as prisoners of war. The Princes were actually, next morning, on the march to Bangalore, not a little affected with the change of their situation; when Lord Cornwallis, at the urgent request of the vakeels, agreed to suspend, for one day, the execution of his orders. The submission of the Sultan was intimated. And on the 19th of March, the hostage Princes performed the ceremony of delivering the definitive treaty to Lord Cornwallis and the allies.[2]

[1] The words of the article were, "One half of the dominions of which Tippoo Sultan was possessed before the war, to be ceded to the allies, from the countries adjacent, according to their situation."

[2] When Tippoo sent out the vakeels with the documents finally prepared, he charged them with a remonstrance on the subject of the outrage which had been committed by Purseram Bhow; and with a request that he might be recalled, with his 20,000 horse, across the river, and

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The revenues of Tippoo's dominions, according to the admitted schedule, were two crores and thirty-seven lacs of rupees. One-half of this, divided equally among the three allies, afforded to each an accession of territory, worth thirty-nine and a half lacs of rupees, approaching to half a million sterling, per annum. The boundary of the Mahrattas was again extended to the river Toombuddra. The share allotted to the Nizam reached from the Kistna beyond the river Penna, and included the forts of Gunjecotah and Cudapa. The British share was obtained in three portions, the first, on the western frontier of the Carnatic, including the Baramahal and the Lower Ghauts; the second a district surrounding Dindegul; the last, the dominions tributary to the Sultan, on the coast of Malabar.[1]

made to answer for his conduct; or, "which would be a still greater favour," added the Sultan, "that Lord Cornwallis would be pleased to permit me to go out and chastise him myself." When the eldest of the Princes delivered the treaty, we are told, that a manly acquiescence appeared in the manner of performing the delivery to Lord Cornwallis; that an air of compulsion and dislike was observed to accompany the ceremony when repeated towards the vakeels of the allies; and that some expressions, not distinctly heard, which the boy took for words of disrespect or dissatisfaction, falling from one of the vakeels, he asked "at what he muttered;" adding, "You may well be silent; your masters have reason to be pleased." Dirom's Narrative, p. 246.

[1] For the history of this war, the principal materials, as yet accessible, are the papers laid before parliament; the official statements in the Gazette; Dirom's Narrative, which, beside a very minute account of the last campaign, contains a retrospect of the previous operations of the war; Mackenzie's Sketch of the War with Tippoo Sultaun; the instructive volumes of Wilks; Moore's Narrative of the Operations of Captain Little's Detachment; and the contemporary historians. Particular references for notorious facts were deemed unnecessary, and would have been troublesome by their number. Of the view of Indian politics which was taken in England at the time of the conclusion of the treaty of Cornwallis, an instructive judgment may be drawn from the following passage in the Annual Register (1792, chap. x. last paragraph). "The advantages

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As some recompense for the virtues and exertions of the troops, the Commander-in-Chief took upon him to order them a donative equal to six months' batta, out of the money exacted from Tippoo; and he and General Medows resigned their shares both in this and the prize-money. For the satisfaction of the army, and to obviate the jealousies and inconveniencies which had been formerly experienced, Lord Cornwallis, at the commencement of the war, agreed, that the plunder taken from the enemy should form one general fund; and that prize-agents to take care of it should be appointed by the army themselves. The officers of the King's army nominated two delegates; those of the Company's Madras army, two; and those of the Bengal battalions, one. A committee was also chosen of seven officers, whose business it was to inspect the accounts of the agents, and make reports upon them to the army. The effects of this arrangement, as might be expected, were admirable. But the democratical complexion of an elective and

which have accrued to the Company from this treaty, amply appear to counterbalance the enormous expense of the war. By the acquisitions in the neighbourhood of the Carnatic, and the consequent possession of the several passes from Mysore, a considerable augmentation of revenue, and a greater protection from hostile incursions, have been obtained in a very important quarter; whilst on the Malabar coast, where we owned but little before, a portion of rich territory has been allotted to us, which, exclusive of its own commercial consequence, by being attached to the Presidency of Bombay, will at once tend to increase the security of that Presidency, and enhance its value. The wise moderation of these counsels, which directed only a partial division of the conquered countries, cannot be too much praised. For had not a sufficient extent of territory been left to Tippoo Sultan, to make him respectable, and still in some degree formidable to his neighbours, the balance of power in India might have been again materially affected, the future adjustment of which would have led to new wars. The treaty was a return, as far as circumstances would admit, to our old and true policy."

deliberative body formed in the army, would, at a short distance afterwards, have made the very proposal be regarded with alarm and abhorrence.

It is so common for nations to ascribe the most odious qualities to every party whom they dread, that the excess to which this low passion is carried in England would be less wonderful, did not the superior attainments of the nation render it far less excusable in them, than it is in a people less favourably situated. Several remarkable instances stand in our history, of a sort of epidemical frenzy in abusing our enemies. The frenzy, too, appears to have corresponded pretty exactly in violence with the degree of terror, which each of those foes, in their several times and places, happened to inspire. Louis the Fourteenth, Tippoo Sultan, and Napoleon Bonaparte may be adduced as conspicuous examples. As in regard to Louis in his day, and Napoleon in his; so among our countrymen, either in India, or in England, scarcely was Tippoo ever spoken of but under the description of a hideous monster; disfigured by almost every vice which renders human nature, in the exercise of power, an object of dread and abhorrence. Even Major Rennell, who is not an example of a man easily hurried away by the prejudices of his countrymen, had already described him as "cruel to an extreme degree;" and though possessed of talents, held in such utter detestation by his own subjects, that it was improbable his reign would be long."[1] And Lieutenant Moore informs us, that "many highly respectable persons, impressed with the same sentiments, doubted not, at

[1] Rennell's Memoir, Introd. p. cxxxix.

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the commencement of the late war, but the defection of his whole army would be the immediate consequence of the approach of the confederate forces."[1]

The fact, however, was, that when the English advanced into the dominions of Tippoo, they discovered such indications of good government as altogether surprised them; a country highly cultivated, and abounding in population; in short, a prosperity far surpassing that which any other part of India exhibited, not excepting the British dominions themselves. And for the sentiments with which he was regarded, some information may be derived from the conduct they inspired. The fidelity with which his people adhered to him under the most trying reverses of fortune, would have done honour to the most wise and beneficent prince. Not an instance of treachery occurred amongst his commanders during the whole course of the war. His troops, with the exception of the men who had been cruelly dragged from the conquered countries, though disheartened by a constant succession of disasters, fought with constancy to the last. The people of the ceded countries yielded as to inevitable fate; but no sooner did an opportunity occur, than they replaced themselves with eagerness under the government of Tippoo.[2]

[1] Moore's Narrative of the Operations of Captain Little's Detachment, p. 197. That officer, having a mind above the ordinary standard, thus describes the defamatory *mania* of his countrymen. "Of late years, our language has been ransacked for terms in which well-disposed persons were desirous to express their detestation of his name and character; vocabularies of vile epithets have been exhausted; and doubtless many have lamented that the English language is not copious enough to furnish terms of obloquy sufficiently expressive of the ignominy wherewith they in justice deem his memory deserves to be branded. Ibid. p. 193.

[2] The following passages from the two intelligent officers to whom we

As the English over-rated the vices of Tippoo; so they greatly over-rated his power and consequence, as an enemy. It was found, after all, that his whole revenues amounted but to two and a-half millions sterling; and instead of the mighty treasures which he and his father were supposed to have accumulated, and which, from the number of troops they had always kept up, and the expensive wars in which

are chiefly indebted for our knowledge of this war, are so honourable to the writers, and instructive to their countrymen, that the insertion of them cannot be declined. "When a person," says Lieutenant Moore, "travelling through a strange country, finds it well cultivated, populous with industrious inhabitants, cities newly founded, commerce extending, towns increasing, and every thing flourishing, so as to indicate happiness, he will naturally conclude it to be under a form of government congenial to the minds of the people. This is a picture of Tippoo's country; and this is our conclusion respecting its government. It has fallen to our lot to tarry some time in Tippoo's dominions, and to travel through them as much, if not more than any other officer in the field, during the war; and we have reason to suppose his subjects to be as happy as those of any other sovereign: For we do not recollect to have heard of any complaints or murmurings among them; although, had causes existed, no time would have been more favourable for their utterance, because the enemies of Tippoo were in power, and would have been gratified by any aspersion of his character. The inhabitants of the conquered countries submitted with apparent resignation to the direction of their conquerors, but by no means as if relieved from an oppressive yoke in their former government; on the contrary, no sooner did an opportunity offer, than they scouted their new masters, and gladly returned to their loyalty again." Moore's Narrative, p. 201. "Whether from the operation of the system established by Hyder, from the principles which Tippoo has adopted for his own conduct, or from his dominions having suffered little by invasion for many years, or from the effect of these several causes united, his country was found every where full of inhabitants, and apparently cultivated to the utmost extent of which the soil was capable; while the discipline and fidelity of his troops in the field, until their last overthrow, were testimonies equally strong, of the excellent regulations which existed in his army. His government, though strict and arbitrary, was the despotism of a politic and able sovereign, who nourishes, not oppresses, the subjects who are to be the means of his future aggrandizement: and his cruelties were, in general, inflicted only on those whom he considered as his enemies." Dirom's Narrative, p. 249.

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they had been almost constantly engaged, it was impossible they should have accumulated; the expense of only two campaigns was found to have so completely exhausted his finances, that he was unable to pay the grain-merchants for the most essential of all articles, when they conveyed it to his camp.

But Tippoo was a braggart, and talked so loftily of his own power, and with so much contempt of the power of the English, that he both hurt their pride, and awakened their apprehensions. The little delicacy which he displayed in construing in his own favour whatever points the treaty left without definition, was no more than what is practised regularly by every Indian Prince, and every other Prince, where he sees no danger of being made to suffer for his encroachments. But the little regard he paid to the anger of the English, and the indifference with which he provoked them, arose from two causes: the hope of assistance from the French, which, had the government of the Bourbons remained undisturbed, he was sure of receiving; and his incapability of estimating the change in regard to the English which had recently taken place. Only a few years before, he had seen his father reduce them to the very brink of destruction; and no change, which to his eye was visible, had added to their power. Their dominions had received no extension; and the Carnatic, which was all that he saw of their dominions, was in a state of rapid deterioration, while his own were in a state of gradual improvement. It was impossible for Tippoo to understand that his father had to contend with only the East India Company, feeble from a defective treasury, and timid, from the jealousy with which they were

watched at home, and from the want of protection which they were sure to experience: That the ministry had now transferred the government of India to themselves: That it was their own ruler into whose hands they had put the reins; and who, if he acted agreeably to them, was sure of their protection: That it was not, in reality, the East India Company with which he had now to contend; but the English government and the East India Company combined, the resources of both of which were clubbed to provide for the war. Not only were the whole revenues of the East India Company devoted to that purpose, and their credit in India stretched to an extent, of which they would have trembled to think, without the firm assurance of ministerial support, and which, without that support, would more than probably have accomplished their ruin; but the ministers gave them parliamentary authority and ministerial countenance, to raise, that is to say, the ministers raised for them, repeated sums in England to a very large amount.

In drawing the balance of profit and loss, upon the speculation which they had in this manner closed, the only advantage which the English could imagine they had gained, was the chance of having rendered Tippoo more pacific, and less dangerous in case of a future war. That there was no other advantage, will appear from a very simple reflection. They had indeed a new territory. But in overbalance of that, it is to be considered that they had expended a sum of money in the war, the interest of which would have exceeded the net revenues of the country which they gained. Their income, therefore, would have

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been greater had they never entered into the war. Then, as to the question in what degree it lessened either the chance or mischievousness of future wars, experience seemed to show that if Tippoo was not exasperated into a more eager propensity for war, he was not more humbled into a tame desire of peace; and the conduct of the government speedily showed, that if he had ceased to be equally dangerous, he was far from ceasing to be equally dreaded. That the Company had added by conquest to their territories in violation of the declared sense and enactments of parliament, and were nevertheless applauded by parliament and the nation, the world beheld, and have not yet forgotten.[1]

The weakness of the Nizam, and his need of resting upon the English for support against the Mahrattas, when no longer checked by the dread of

[1] Sir John Malcolm, whose loyalty offends not commonly on the score of weakness, seems to regard it as one of the principal advantages of the war, that it displayed Lord Cornwallis's contempt for the act of parliament. "The policy" (says that writer, Sketch of the Political History of India, p. 94) "of Lord Cornwallis was neither directed to obtain a delay of hostilities, nor limited to the object of repelling the immediate danger, with which the state, over whose councils he presided was threatened." That is to say, it was not confined to the express object to which he was limited by act of parliament. "When fully satisfied, of the designs of Tippoo, he hastened to attack him; he saw the great advantages which were likely to result from early offensive operations; and the moment he resolved on war, he contemplated (as appears from the whole tenour of his correspondence previous to the commencement of hostilities) the increase of the Company's territories in the quarters of the Carnatic and Malabar, as a desirable object of policy." The grand object, indeed, of Sir John's intelligent work, is to point out the impolicy of the restricting act of parliament; to demonstrate that the most eminent of the Indian governors, Mr. Hastings, Lord Cornwallis, and Lord Wellesley, have treated it with uninterrupted contempt; and received applause for every successful violation of it.

Tippoo, made that chief desirous of maintaining the fortunate and useful connexion he had formed.

Between the English and Mahrattas jealousies quickly arose. The Mahrattas saw with regret the shield of the British power held up between them and the Nizam, whom they had long destined for their prey.

While the armies were before Seringapatam, and the Sultan was yet unsubdued, Mahdajee Sindiah marched towards Poonah with an army; and not only alarmed Nana Furnavese who governed in the name of the Peshwa, and whose authority Sindiah wished to usurp; but was regarded with suspicion by the English themselves.

When the English, before the war, were bidding so high for alliances against Tippoo, Sindiah, too, offered his services to sale; but asked an exorbitant price. He required that two battalions of the British troops should join his army as an auxiliary force, in the same manner as the armies of the Nizam and Peshwa; that the English government should engage to protect his dominions in the upper provinces during his absence; and should become bound to assist him in the reduction of the Rajpoot Princes, who resisted the extension of his conquests. To involve themselves in war in the distant provinces of Hindustan, for the aggrandizement of Sindiah, whose power was already an object of alarm, by no means accorded with the policy of the English; and the alliance of Sindiah was not obtained.

Upon the conclusion of the peace with Tippoo, a proposition was made to the British commander, by

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Hurry Punt; that the service of the British troops with the army of the Peshwa should be rendered permanent, in the same manner as that of the corps which was attached to the army of the Nizam. It was the opinion of Lord Cornwallis, that this subsidiary force, though asked under the pretext that it would only be employed in enabling the Peshwa to reduce to obedience any of his refractory dependants, was really desired as a weapon against Mahdajee Sindiah, whose power endangered the authority of the minister at Poonah. But though Lord Cornwallis could not fail to be sensible of the extraordinary increase of the power of Sindiah, who had established the dominion given him, by the policy of Mr. Hastings, over the Mogul provinces, and employed in his own favour the remaining authority of his imperial captive, while he had formed a large and formidable corps of regular infantry under European officers mostly French, and erected founderies and arsenals, in short had made the most formidable accumulation of all the instruments of war. belonging to any Prince in India; he regarded all attempts to check the career of Sindiah, as either imprudent, or contrary to the act of parliament, and unlikely to obtain the concurrence of the ruling powers at home. He therefore refused to accede to the wishes of the Poonah minister; though he directed the British Resident at the Court of Sindiah, to make a spirited remonstrance, when intelligence arrived in July that the claims of the Emperor to his tribute from Bengal began to be renewed.

According to the terms on which the receipt and

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disbursement of the Carnatic revenues had been assumed by the English, they were now to be restored, when the war was at an end. As soon as Lord Cornwallis led back the army from Seringapatam to Madras, he entered upon the discussion of a new arrangement, which, as usual, was somewhat affectedly, if not ludicrously, denominated a treaty. Of the former agreement both parties complained; the Nabob, that its pecuniary conditions were heavier than the country was able to bear; the English, that the securities it provided for the payments of the Nabob, were inadequate to their end. The treaty, therefore, which was made with Sir Archibald Campbell, and the obligation of the Nabob, respecting the annual payments to his private creditors, were annulled: and it was declared, that the agreement which was now concluded with Lord Cornwallis, provided for the objects of both.

According to the terms of this new arrangement, the contribution of the Nabob towards the peace establishment was fixed at nine lacs of pagodas, per annum; the payment to his creditors was reduced from twelve to six lacs, 21,105 pagodas; and for the expenses of war, he was to contribute, as by the last agreement, four-fifths of his revenues.

As security for these payments, it was agreed, That during war, the Company should assume entirely the receipt and disbursement of the Nabob's revenues, which he should recover upon the restoration of peace: And that, if any failure of payment occurred during peace, the Company should enter upon the receipt of the revenues of certain specified

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districts, from which the Nabob's officers should, in that event, be withdrawn. The Polygars of Madura and Tinivelly, whose power enabled them to resist the feeble government of the Nabob, and, in a great measure, to prevent the collection of his revenue, were transferred to the management of the English.

It appears from the despatches of Lord Cornwallis, that he set a great value upon this arrangement; and fondly believed it was calculated to answer all the ends which it was the object of himself and his countrymen to secure. The complaints of which he had heard, were chiefly complaints respecting the securities for the payments of the Nabob. The securities which he had taken had the appearance of being complete; and he saw not far beyond first appearances. The observation is just, " that though this engagement simplified in some points, and greatly ameliorated in others, the engagement which Sir Archibald Campbell had contracted; it corrected none of its radical defects."[1] Management during a limited and precarious period excluded that minute knowledge on which alone could be founded an assessment, just either to the Company or the inhabitants; ensured the bad offices of all descriptions of the people, who had an interest in courting the government which they were again to obey; and totally prevented the introduction of a new management, in place of that cruel and oppressive system which, under the government of the Nabob, desolated the country.

Of the transactions of Lord Cornwallis with

[1] Sir John Malcolm, ut supra, p. 114.

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foreign powers, one yet remains of sufficient importance to require a separate statement. In 1793, the change of government in France precipitated the people of England into a war with that country. It followed, as a matter of course, that in India the possessions of the French should be attacked. The interests of the French in India had now, for a great while, languished under poverty and neglect. The progressive embarrassments of the government at home, and the progressive intensity with which the eyes of the nation were turned upon that government, left the Indian establishments in a state of weakness, ill fitted to resist the weight of the English power, when the bonds of peace were broken asunder. The forces of Madras were sent against Pondicherry, with Major-General Sir John Brathwaite at their head. And Lord Cornwallis hastened from Bengal, to obtain the honour of extirpating the republicans. The difficulty, however, was so very small, that the enterprise was accomplished before he arrived; and the whole of the French settlements in India were added to the English possessions.

CHAPTER V.

Lord Cornwallis's Financial and Judicial Reforms.

BOOK VI CHAP. 5. 1787. THE measures taken during the administration of this Viceroy, for altering the internal government of the British dominions in India, are not less memorable than his transactions with foreign states.

In the eye of the new government of India, consisting more ostensibly of the Directors, more really of the King's ministers, revenue naturally constituted the first object. In the code of instructions, with which, upon his departure for his government, Lord Cornwallis was provided, occasion was taken to censure the financial administration of his predecessors, and to prescribe a new arrangement. The frequent changes, the substitution of farmers and temporary agents for the permanent Zemindars, the failure of all attempts to enhance the revenue, and the exclusion of the collectors from a share in forming assessments of their respective districts, were mentioned with disapprobation. Complaint was made of the heavy arrears outstanding on the settlement of the last four years; and the country was represented as exhausted and impoverished. Such is the opinion which it was, by the King's ministers and Court of Directors, held fit to express,

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of the merits of the British government, in India, at the date of this document, in April, 1786. For the purpose of improvement, they directed, that the settlement should be made with the Zemindars. Knowledge sufficient for an assessment, they presumed was already acquired. They prescribed the period of ten years, as the limit to which the settlement should be confined, in the first instance. But they declared their intention to render it permanent, provided, on experience, it should merit their approbation. They further commanded, that the collectors of the revenue should be vested with the powers of judicature and police; by having conveyed to them the principal authority in the Dewannee Adauluts, with the power of magistrates in apprehending offenders against the public peace. And, in making this provision for the administration of justice, they declared, that they were not actuated by "abstract theories—drawn," they said, "from other countries, or applicable to a different state of things, but a consideration of the subsisting manners and usages of the people."

Upon his arrival in India, Lord Cornwallis found, that his masters in England were egregiously mistaken, when they imagined that there was sufficient knowledge, already treasured up, for the business of settling the revenue. The very nature of the land-tenure was not understood. The rights of the different orders of people, who cultivated the soil, and divided its produce, formed a complicated mystery. All that was known, with any certainty, was the amount of revenue which had been annually collected. But whether the country could pay more, or

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the exactions were already heavier than it could bear, no man had any satisfactory grounds to affirm. In this situation Lord Cornwallis determined to suspend his obedience to the orders of Whitehall and Leadenhall-street; to content himself, in the mean time, with annual settlements, by the local agency of the district collectors, and the superintendence of the Committee, now decorated with the title of Board, of Revenue; to circulate interrogatories, and collect information from every accessible source.[1]

The directions of the government at home, with regard to the administration of justice, were treated with greater respect; the Governor-General saw nothing here to dissuade prompt obedience. In 1787, regulations were promulgated; and the collectors were vested with the triple power of revenue agents, of judges, and of police magistrates. It is good to hear the reasons which the compound of statesmen and Directors, now formed into an instrument of government for India, produced for this device of theirs. They prescribed it, they said, on account of its "tendency to simplicity, energy, justice, and economy."

By Mr. Shore,[2] on whom the Governor-General chiefly relied for information, it was remarked; in that document, in which he exhibited the result of his observation and inquiries; That the constitution of the English government in India was ill adapted for promoting improvement, and the situation of the

[1] The fate of Mr. Francis, and of Mr. Francis's ideas, formed a contrast. He himself had been treated by the powers which were, with any thing rather than respect. But his plan of finance was adopted with blind enthusiasm, with a sort of mechanical and irresistible impulse.

[2] Afterwards Sir John Shore, and finally Lord Teignmouth.

Company's servants ill calculated for the acquisition of knowledge and legislative talent. The individuals of whom the government was composed, were in such a state of fluctuation, that no separate portion of them had time to conceive and mature any important ideas of reform. In the next place he remarked, that the servants of the Company were so much engrossed with official forms and the details of business, as to be in a great measure debarred from the acquisition even of local knowledge. Still further; he asserted, that the knowledge which they acquired was not appropriate knowledge, such as lays the foundation for political wisdom: it was a mere knowledge of practice; that is to say, a knowledge of a certain number of facts which are obvious, with ignorance of the numerous facts which lie more remote, and ignorance of the numerous connexions which subsist both among the facts which may happen to be familiar, and those of the far wider circle which is wholly unknown.[1] From knowledge of this sort no

[1] The words are worth transcribing. They meet some obstinate prejudices, and some pernicious ideas. "If we consider the form of the British government in India, we shall find it ill calculated for the speedy introduction of improvement. The members, composing it, are in a constant state of fluctuation; aud the period of their residence often expires, before experience can be acquired, or reduced to practice.—Official forms necessarily occupy a large portion of time, and the constant pressure of business leaves little leisure for study and reflection, without which no knowledge of the principles and detail of the revenues of this country can be obtained.—True information is also procured with difficulty; because it is too often derived from mere practice, instead of being deduced from fixed principles.—Every man who has long been employed in the management of the revenues of Bengal, will, if candid, allow, that his opinion on many important points has been often varied, and that the information of one year has been rendered dubious by the experience of another. Still, in all cases, decision is necessary. And hence, precedents, formed on partial circumstances, and perhaps, on erroneous principles, become

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plan of improvement, no combination of expedients, to make the future better than the past, can ever be rationally expected.

It is necessary to remark, that Mr. Shore, aware of that succession of blunders, which constituted the succession of attempts to improve the mode of governing India, claims indulgence for so many errors, on account of the time required to obtain a knowledge of Asiatic manners and finance. This apology may delude, unless distinction is made between the errors which arose from the want of local knowledge, and those which arose from general ignorance. Those which arose from the want of local knowledge, as far as more time was absolutely necessary for its acquisition, are not to be blamed. Those which arose from general ignorance are, in every instance, the proper objects of reprobation; because provision should always have been made for giving to the government of India the benefit of men capable of applying the best ideas of their age to the arrangement of its important affairs.[1]

established rules of conduct. For a prudent man, when doubtful, will be happy to avail himself of the authority of example. The multiplication of records, which ought to be a great advantage, is, in fact, an inconvenience of extensive magnitude; for in them only the experience of others can be traced, and reference requires much time and labour." Mr. Shore's Minute on the Bengal revenues, paragraph 2nd, in the Appendix, Fifth Report of Committee on India Affairs, 1810, p. 169. If the multiplication of documents is troublesome to the Company's servants, what must it be to the historian, whose field is so much wider? It is worth remarking, that the Committee in 1810 not only inserted the whole of the Minute, in the Appendix to the Report above quoted, but laid so much stress upon this particular passage, as to incorporate it with the Report. p. 11.

[1] The chief source of difficulty is here overlooked. It is that of combining local with general knowledge. If the Company's servants go young to India, they cannot carry with them much general financial information; if they go to India advanced in life, they will never acquire

On the 2nd of August, 1789, Lord Cornwallis informed the government at home, that he had at last matured his plan of revenue, and was preparing to carry it into immediate execution. He took that occasion to describe the state in which the country would be found at the time when his law would begin to operate; and announced the improvements which he expected it would introduce.

"I am sorry," these are his words, "to be obliged to say that agriculture and internal commerce have, for many years, been gradually declining; and that, at present, excepting the class of shroffs and banyans, who reside almost entirely in great towns, the inhabitants of these provinces were advancing hastily to a general state of poverty and wretchedness.

"In this description I must even include almost every Zemindar in the Company's territories; which, though it may have been partly ocasioned by their own indolence and extravagance, I am afraid must also be, in a great measure, attributed to the defects of our former system of management."

The beneficial effects which he expected to flow from the plan, were summed up in these compre-

local and practical knowledge. It is, therefore, impossible to unite the two to any effective extent under the present system, but it is certainly better for the country that practical skill should be acquired by experience, than that theorists and experimentalists should be intrusted with the management of the revenues of India. It is only necessary to allow time and opportunity for the acquirement of experience, and that the evils adverted to in Mr. Shore's Minute, should be guarded against as much as possible. Changes of appointment should not be needlessly frequent, and residence in India should be encouraged as long as service is effective; fluctuation should not be incessant; period of residence should not be cut short before experience has been acquired and applied to practice.—W.

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hensive terms, "Wealth and happiness to the intelligent and industrious part of the individuals of the country." And, independent, added his Lordship, of all other considerations, "I can assure you that it will be of the utmost importance, for promoting the solid interests of the Company, that the principal landholders and traders, in the interior parts of the country, should be restored to such circumstances, as to enable them to support their families with decency, and to give a liberal education to their children, according to the customs of their respective castes and religions; that a regular gradation of ranks may be supported, which is no where more necessary than in this country, for preserving order in civil society."[1]

Every where, and apparently at all times, in India, the revenue of government had been almost wholly derived from the annual produce of the land. It had been originally extracted in that rude and simple mode which accorded with the character of a rude and ignorant people. The annual produce of the land was divided into shares between the cultivator and the government: originally shares in kind, and so to the last in many parts of India; though latterly, government took the money equivalent, in

[1] Letter from Lord Cornwallis to the Court of Directors, 2nd August, 1789; printed by H. of C. 8th March, 1790. The following document contains a similar affirmation, respecting the failure of former regulations. "By the rules established in 1772, all *nuzzers* or *salamies* (free gifts) which had been usually presented (to the Company's servants) on the first interview (with the natives), as marks of subjection and respect, were required to be totally discontinued, the revenue officers were forbidden to hold farms, &c.—This regulation, as far as related to the unavowed emoluments of the Company's servants, does not appear to have been effectual." Fifth Report, ut supra, p. 11.

those provinces which had long enjoyed the benefit of a Mogul administration. The shares varied according as the land was recently or anciently brought under culture, and according to the pressure sustained by the state. Two fifths to the cultivator, and three to the government, have been assumed as the average proportions for land under full cultivation.[1]

Every year to ascertain the produce of every field, and collect from it the share which belonged to the government, was a very laborious and complicated process; and some variety occurred in the modes in which the operation was performed. In the petty Hindu governments, it would appear, that the agents of the prince transacted immediately with the husbandmen, called ryots, either man by man, or village by village.

The establishment of villages (a vicinity, or parish,[2] would, perhaps, be the more appropriate title) is a peculiarity in India, of which, having been already explained, it is only necessary here to excite the recollection. Each vicinity, call it village, or call it parish, constituted a little community; which had a species of government within itself.[3] Of the

[1] By the Committee on Indian affairs in 1810, Fifth Report, p. 16.

[2] Παροικια.

[3] Detailed descriptions of the constitution of the village communities, as they exist in the South and West of India, are to be found in different authorities. Wilks, South of India, i. 117. Briggs on the Land Tax of India. Duff's History of the Mahrattas, i. 31. Sykes on Land Tenures in the Dekkan. Colonel Briggs has ascertained also, that vestiges more or less complete of the same system, are to be found in Bengal and Hindustan. In the Upper Provinces the system of village property was found entire when they came into the British possession, and the Revenue settlements have recognised the principle. E. India Records, Revenue,

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villagers, one was headman, distinguished in different places by different appellations; another was employed to keep and register the accounts of the community. Each community had also its Brahmens, as well for the service of the gods, as for the education of the children. It was provided, too, with the various species of handicrafts, and labourers, required by the habits of the people. The land of the village was sometimes divided into lots, and was regarded as individual property; but sometimes it belonged to the community as a whole; and a separate partition of it was made every year by the villagers among themselves, each ryot receiving for the culti-

i. 415. Much valuable light has been also thrown upon the system as it exists at Azimgerh, on the borders of Oude. Report on Azimgerh by Mr. Thomason. J. As. Soc. Bengal. 1840. They had suffered great disorganization in Malwa, but speedily resumed their form when tranquillity was secured. Malcolm's Central India, ii. 22. The author remarks—"We may, after the scenes which they (the village institutions) have survived in Central India, presume them to be indestructible, unless the hand of power be actually exerted to put an end to an establishment which has for ages formed the basis of all Indian governments." Ibid. ii. 4. It is evident that the existence and rights of village communities or townships were not known or suspected at the time of Lord Cornwallis's regulations, and although it is true that they had suffered much injury in Bengal, yet there were indications of their existence, and it is remarkable that the undoubted industry and talent which was engaged in the investigation of the state of landed property amongst the natives of India, should have missed so curious a peculiarity. It is a proof of the extreme difficulty which then prevailed of procuring accurate information; and our inquirers in fact were unable to avail themselves of the sources best entitled to reliance. They could not discourse with the people—they did not live amongst them—they derived such information as they, with prodigious labour and most commendable exertions, were able to collect, through the medium of the Persian language, and the functionaries of the Mohammedan Government. It is, also, however, an exemplification of our liability to overlook that which is unfamiliar to our own preconceptions, and different from all to which we have been accustomed. We suspect not the existence of that, for the appreciation of which we have no standard ready.—W.

vation of the year, such a portion as appeared to correspond with his capital or means. In this, as in other transactions, the headman was the great regulator; but rather, it should seem, from the habitual deference which was paid to him, than any power which he had to enforce his decrees. When the revenue agents of the government transacted village by village, without descending to the annual assessment of each individual ryot, they levied a particular sum upon each particular village, and left the villagers to settle the individual quotas among themselves.

When the Mogul government extended itself so enormously as to comprehend the greater part of the vast Indian continent, the greatness of its transactions, and the rudeness of its mind, naturally rendered it impatient of details; and modes were invented of transacting the business of revenue more in the gross. The revenue agents were rendered stationary, in the districts where they collected, and became responsible to the government for the revenue, receiving payment, by a per centage, or share of what they collected. Under the Indian governments, Moslem or Hindu, every thing which was enjoyed, whether office or possession, had a tendency to become hereditary. There was a great convenience in preserving, in each district, the same grand agent of revenue, and after himself, his son or successor; because each was better acquainted with the people and resources of the district, than, generally speaking, any other man could be expected to be. In this manner, the situation of those agents became in fact hereditary; and the government of

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the Moguls, which was, though occasionally violent, in many respects considerate and humane, seldom allowed itself to displace those officers, without some heavy ground of displeasure; even when it sometimes superseded them in the business of collection, it generally made them an allowance, to preserve their families from want or degradation. Before the period of the English acquisitions, the Persian appellative of Zemindar[1] had been generally appropriated to them, in the northern regions of India.

Being responsible to government for the revenue, they were allowed the exercise of all the powers

[1] The term means literally land-holder; the nature of the office has been unnecessarily perplexed by the use of the term sometimes in its literal, sometimes in its conventional sense, or by an actual combination of functions. Under the native village system several villages were formed into a district, and besides the headman of each village, there was a headman of the district. He was probably at first nominated by the villagers, and was one of their own body, being a proprietor of a share of the common land. Subsequently he may have been nominated by the Government, on whose behalf he collected its dues, receiving as an equivalent, a per centage upon the collections. But besides this fee, and whether he had land of his own or not, he received from the villagers subsistence allowance in the form of a grant of land. Now as the office, as the text remarks, very commonly became hereditary, the Nan-kar, or subsistence-land, became a hereditary succession, and this either with or without a proprietary estate derivable from a share in the township, invested the headman of a district with the character of a land-holder, independently of, and not inconsistently with, his office of collector of revenue. He was, therefore, not merely an officer of the Government. He was at the same time the representative of the people, and in that capacity a holder of certain land. It was consequently possible to deprive him of his government office, as was done repeatedly in the time of Hastings, without destroying his character of Zemindar. He was still the head of the district on behalf of the people, and enjoyed his own land, or that attached to his popular office, although he had no longer any thing to do with the collection of the revenue. At the same time his continuance in his Zemindari did not constitute him proprietor of the soil beyond his subsistence-land, or such share or shares as might have come down to him from an original member of the township. Briggs on the Land Tax. Malcolm's Central India, ii. 9.—W.

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which, in the rude government of the Moguls, were accounted necessary for realizing it. The common method in India of enforcing payment of any debt, was the use of coercion in the hand of the creditor. For revenue debts government was not likely to pursue more lenient methods. A military force was the instrument allowed; and the Zemindars, in the common style of Oriental pride, retained about them as many troops as they could possibly find the means of maintaining. Under Eastern despotisms the different powers of government were seldom communicated asunder. To the power of collecting the revenue by a military force, was added the power of administering justice. All civil disputes appear to have been regarded in India as falling naturally under the cognizance of the agents of revenue. And, in fact, the whole business of judicature and police, with the sole exception of inflicting the highest class of punishments, devolved upon Zemindars, each within the district over which he was placed.[1]

"We generally," says an intelligent servant of the Company, speaking of himself and his brethren, "see Indian affairs, with English eyes; and carry European notions into Indian practice."[2] To this

[1] This statement is not quite correct. As head of the district, the Zemindar in common with the headmen of the villages, was responsible for the police, and maintained a civil force to preserve peace, protect property, and collect the revenues; but he was never officially armed with judicial or military authority. The expounder of the law was the Pundit or Maulavi, or Cazi. The military commander was the Foujdar. Some of the more considerable Zemindars took advantage of the distracted state of the empire to raise troops, and assume the attitude of military chiefs, but this was no part of their proper functions.—W.

[2] Mr. Thackeray, in his Report on the comparative Advantages and Dis-

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source may evidently be traced a considerable proportion of the blunders of our countrymen in the government of India. For how long a period, and as yet hardly closed, did they resolve upon finding a feudal system in India? With this turn of mind, it was to be expected, that they would, if possible, find a set of land-holders, gentry, and nobles, to correspond with those in England. The Zemindar had some of the attributes which belong to a land-owner: he collected the rents of a particular district, he governed the cultivators of that district, lived in comparative splendour, and his son succeeded him when he died. The Zemindars, therefore, it was inferred without delay, were the proprietors of the soil, the landed nobility and gentry of India.[1] It

advantages of the Ryotwar and Zemindary settlements, dated 4th August, 1807; Fifth Report, ut supra, App. 31. p. 990.

[1] It can scarcely be said with justice, that this inference was drawn without delay. The subject had received repeated attention. A Letter from the Committee of Revenue, of March 1786, cited in Harington's Analysis, iii. 252, observes, that "the discussion of the rights of the Zemindar has employed *for years past* the first talents both in India and Europe." The most rash and uncompromising advocate of the doctrine was Francis, and he maintained the proprietary rights of the Zemindars with equal pertinacity in his place in Parliament. Sixth Report, Appendix, p. 915, 937. Hastings never admitted it, and in opposition to Francis's opinions, a committee was appointed by Hastings to investigate the nature of landed tenures in Bengal. The report of this committee, submitted in 1778, authorizes no inference in favour of the proprietary rights of the Zemindars. "Almost all the lands, it is said, are held under some person who collects the rents, pays a revenue, and stands between the Government and the immediate tenant of the soil, whether the land be considered as belonging to Government, or the property of the person under whom it is held, or of him by whom it is occupied and cultivated, it is still subject to some superior who possesses rights and claims over it, the extent of which we presume not to examine. But whatever these rights may be, the land itself is liable to the Government revenue, and whoever possesses it, holds it on this special condition." Harington's Analysis. Revenue, ii. 62. For a summary sketch of the discussions in

was not considered that the Zemindars, though they collected the rents, did not keep them; but paid them all away, with a small deduction, to the government. It was not considered that if they governed the ryots, and in many respects exercised over them despotic power, they did not govern them as tenants of theirs, holding their lands either at will or by contract under them. The possession of the ryot was an hereditary possession; from which it was unlawful for the Zemindar to displace him: For every farthing which the Zemindar drew from the ryot he was bound to account: And it was only by fraud, if, out of all that he collected, he retained an *ana* more than the small proportion which, as pay for collection, he was permitted to receive. Three parties shared in the produce of the soil. That party to any useful purpose most properly deserves the name of proprietor, to whom the principal share of the produce for ever belongs. To him who derives the smallest share of the produce the title of owner least of all belongs.[1] In India to the sovereign the profit of the land may be said to have wholly belonged. The ryot obtained a mere subsistence, not more than the necessary wages of his labour. The Zemindar enjoyed allowances to the amount of about ten per cent. upon the revenue which he collected, not more than a compensation for his services. To the government

Bengal, in which Mr. Grant, Sir J. Shore, Mr. Law, and a writer under the signature of Agricola, were the principal disputants, see British India Analyzed, ii. 410.—W.

[1] This is even the language of English law. "By a grant of the profits of the land," say the English lawyers, "the whole land itself doth pass. For what is the land but the profits thereof?"

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1789. The English were actuated not only by an enlightened, but a very generous policy, when they resolved to create, in favour of individuals, a permanent property in the soil, as conducive at once to the increase of its produce, and the happiness of the people. They were under the influence of prejudices in the mode of carrying their design into execution. Full of the aristocratical ideas of modern Europe, the aristocratical person now at the head of the government, avowed his intention of establishing an aristocracy, upon the European model; and he was well aware that the union, at home, of statesmen and Directors, whom he obeyed, was under the influence of similar propensities.

In agreement with the orders from home, the resolution was, to form a settlement with the Zemindars for the revenues of their several districts; to limit the settlement in the first instance, to a term of ten years; but to render it permanent, if sanctioned by the authorities in England; and to recognise the Zemindars as hereditary proprietors of the soil, upon payment, as a land-tax, not to be enhanced, of the sum at present assessed.

To such a degree were the English, up to that hour, unacquainted with the country, that the most instructed among them differed prodigiously in estimating the revenue which Bengal was competent to yield. Some were of opinion that the existing rate of assessment was heavier than the people could bear. Others conceived that it was far below the

amount to which it might, with propriety, be raised. The government, after all its inquiries, had no better foundation on which to place the magnificent structure it intended to raise, than the amount of the actual collections of preceding years; upon the average or medium of a few of which the assessment, destined for perpetuity, was now arranged. The authorities at home dissuaded, or rather forbade, an actual measurement and valuation of the country; and made a remark which, in itself, does them credit, whatever may be thought of its application to the occasion on which it was produced: that an assessment below what the country could bear, was no detriment, in the long run, to the government itself, because the riches of the people were the riches of the state.

It was easy for the government to assume that the Zemindars were proprietors of the soil under the Mogul sceptre; and it was easy to declare that they should be so in future. But it was not easy to reconcile these proceedings with the rights of other classes of the people. Under the Mogul system, there were various descriptions of persons, as *Talookdars*, *Chowdries, Munduls*, *Mokuddims,*[1] who, as well as the Zemindars, had hereditary claims upon the produce of the soil; and it was not the intention of government to sacrifice to any class of its subjects the interests of any other. But the interests of the ryots, which were of many times the importance of

[1] The three last were different designations of the same functionary—head-men of villages or districts. The Taluk-dar was a holder of land by different tenures—as grants from Government, from a Zemindar, by purchase, inheritance, &c., but usually paying his land-tax to Government direct.—W.

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the interests of all the other classes taken together, whether the mass of individual happiness, or the power of the state, be regarded as the end, were by far the most difficult to bring into a state of concordance with the rights which were thus to be conferred upon the Zemindars.

The possessions of the ryots, either individually, or by villages, were hereditary possessions. So long as they continued to pay to government the due proportion of the produce, they could not lawfully be dispossessed. They not only transmitted their possessions by descent; but had the power of alienation, and could either sell them, or give them away.[1] At

[1] This statement is too comprehensive, and is therefore inexact; and it is of importance to correct the misuse of the term, as it leads to practical errors. The ryot, as synonymous with the actual cultivator, is not necessarily the proprietor of the soil. Proprietary right depends upon an individual being a member of the family or corporation by which at some indefinite period the village lands were held in common. In all parts of India these persons are found in various relations to the soil. They may cultivate their own share or shares, in which case alone they combine the characters of proprietor and ryot. They may have let their land, and in that case they may have let it to a ryot inhabiting the same village, or to one inhabiting another village. They may have actually sold their land; in which case they cannot of course be considered as proprietors; but they still are to be regarded as members of the village community, and in that capacity, as having a voice in the settlement of the revenue to be paid to the state, the purchasers of their lands having no such corporate authority. For it is clear, that the qualification of being a member of the village proprietary, a member of the commons house of the community, is not dependent upon the land, but upon descent. The legislators of the commune are hereditary, and they cannot transfer, by sale or appointment, their privileges, which birth alone confers. They are the heirs of the first occupants and settlers in their character of rulers—not of cultivators; and this principle of organization chiefly illustrates the history of these establishments. They have originated in conquest, or it may be termed colonization, but it has been the forcible colonization of an occupied country, thinly occupied perhaps, rudely cultivated no doubt, but there have been inhabitants who in some instances may have been destroyed, but who in others were reduced to a state of serfage. The immigrants, more civilized and more powerful, have partitioned the lands amongst distinct families or fraternities, who have

an early period of the Mogul history, a minute survey had been made of the land; upon that survey an assessment had been founded, which had long been regarded as the standard of what every field was to pay; even when new imposts, during the progressive difficulties and corruption of the Mogul administration, were superadded, the Zemindars were bound to give written schedules, called *pottahs*, to the ryots, specifying the particulars of the assessment upon each individual; and these documents were registered in the government accounts, and intended for the protection of the ryot against the extortion of the collector.

The means which, under the Mogul sceptre, were provided for the security of the ryots, were very inadequate to their end. The Zemindars were enabled to exercise universal oppression. Under the eye of a humane and vigilant governor, they were occasionally restrained, by the terror of summary punishment, from the excesses of exaction. But, in general, they took from the ryots every thing beyond what was

held certain districts in common as proprietors and rulers. The members of the families have subdivided the lands, but not the sovereignty. As they multiplied, the lands were still more divided, or were disposed of to meet the wants of the occupants; but the authority over the whole could not be communicated to persons of other birth and other castes, and the hereditary right depending on birth was indefeasible, although after a long period the possession of such right might be the only record of community of origin. Now, although it is no doubt true that the principle of village organization is very ancient, yet it is not necessary that all the instances should pretend to high antiquity. The contrary is known to be the case, and both Colonel Sykes and Mr. Thomason specify instances, where within the last two or three centuries the village municipality has either been exterminated or become extinct, and lands and powers have passed to other associations. The organization, has, however, been preserved, and is now intelligible. See Briggs, Sykes, Thomason, also Malcolm's Malwa, and Elphinstone's Report on Poona.—W.

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necessary to preserve them in existence; and every now and then desolated whole districts by the weight of their oppressions. This was contrary to the laws under which the Zemindar was appointed to act. But to whom was the ignorant, the timid, the credulous, the indigent ryot, to apply for redress? His fears, and very often his experience, taught him, that to suffer in patience was the prudent course. The exactions of the Zemindars were covered with so many ingenious contrivances, that they puzzled the wits of the simple cultivator, and often eluded the eye of the government itself.

If the aristocracy was provided for, it appears to have been thought, as by English aristocrats it is apt to be thought, that every thing else would provide for itself. The rules by which the payments of the ryots were determined varied in various places; and so intricate did they appear to the Anglo-Indian government, that no little trouble would be necessary to make an assessment in detail. The ryots were, therefore, handed over to the Zemindars in gross. The Zemindars were empowered to make with their ryots any settlements which they chose, under a mere general recommendation to be guided by the custom of the place. One security alone was thought of for the ryot. Upon the terms on which the Zemindar agreed to fix his payment, he was to give him a *pottah;* and according to the terms of that pottah, his possession or estate was to be equally permanent with that of the Zemindar.

When the principles of the decennial settlement were finally resolved, and proclamation of the mea-

sure was about to be made, a question arose, whether notice, at the same time, should be given of the intention to make the assessment and its rules unalterable, in case the authorities in England should approve. Mr. Shore, though he was among the leading patrons of the Zemindary system, opposed such an intimation, as fraught with imprudence. The Zemindars, he affirmed, were a set of people, whose minds would be as powerfully governed by a decennial, as a perpetual term. He insisted upon the deficiency of the information under which the matter had been arranged. He allowed that enormous abuses existed in the mode of dealing of the Zemindars toward the ryots; abuses which no sufficient expedients had been employed to correct. And he desired that a door might be left open for the introduction of such improvements as the experience of ten years might suggest.

The advantages which the imagination of the Governor-General had painted, as likely to result from the permanence of the settlement, had made so deep an impression on his mind, that he opposed the arguments of Mr. Shore; persisted in his purpose of proclaiming the design; and declared his resolution to use all his influence with the Court of Directors, that they should not wait for the lapse of ten years, but make the settlement perpetual without any loss of time. The circumstance, from which he most vehemently argued, was, the improvement which certainty of enjoyment, he affirmed, would effect, and which certainty of enjoyment alone could be expected to effect, in the cultivation of the country. "I may safely," said he, "assert that one-third of

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the Company's territory in Hindostan, is now a jungle, inhabited only by wild beasts. Will a ten years' lease induce any proprietor to clear away that jungle, and encourage the ryots to come and cultivate his lands? when, at the end of that lease, he must either submit to be taxed, *ad libitum*, for his newly acquired lands, or lose all hopes of deriving any benefit for his labour.—I must own, that it is clear to my mind, that a much more advantageous tenure will be necessary, to incite the inhabitants of this country to make those exertions which can alone effect any substantial improvement."[1]

The authorities which constituted the Indian government made it their profession, and their boast, that they were not directed by "abstract theories, drawn from other countries, and applicable to a different state of things;"[2] and the fact was, that almost every step which they took was the result of an "abstract theory," commonly drawn from something in their own country, and either misdrawn or misapplied. The abstract theory now acted upon by the Governor-General; namely, that the highest improvements in the cultivation of the land can be expected from none but the proprietors of the land; was just only in one, and that a restricted, point of view. But though it were proprietors alone that had sufficient motives for the highest efforts in cultivation, the Governor-General, and his ministerial and directorial masters, who concurred with him, ought to have reflected, that there are sorts of proprietors;

[1] Governor-General's Minute, 18th Sept. 1789, Fifth Report, ut supra, p. 472.

[2] Vide supra, p. 469.

and that it is not from every sort, that any improvement whatsoever, or any attempt towards improvement, is to be expected. They might have reflected, for how many centuries the soil of Poland has been private property, or the soil of Russia, and how little, in those countries, of any thing like improvement, has yet taken place. They might have recollected, that the nobles even of France, where knowledge was so far advanced, had for many centuries before the revolution enjoyed the property of the soil of France; and that the agriculture of France still continued in the most deplorable condition.[1] There are three sets of circumstances, whose operation, where it is felt, prevents the improvement of the soil at the hands of its proprietors: first, ignorance; secondly, possessions too large; and thirdly, too much power over the immediate cultivators. The last is by far the most important circumstance; because men, with very few exceptions, as education and government have hitherto moulded their minds, are more forcibly drawn by the love of absolute power, than by that of money, and have a greater pleasure in the prostrate subjection of their tenants than the increase of their rents. When our countrymen draw theories from England, it would be good if they understood England. It is not because in England we have a landed aristocracy, that our agriculture has improved, but because the laws of England afford to the cultivator protection against his lord. It is the immediate cultivators who have increased so wonderfully the produce of the

[1] See a good book, Travels in France by Arthur Young, Esq., passim.

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land in England, not only without assistance from the proprietors, but often in spite of them. The proprietors of the land in England even to this hour, exhibit one of the strongest proofs which can be adduced, of the ascendency which is exercised by the love of domination over the love of improvement and of wealth. No principle is more thoroughly established, and indeed more universally admitted, than that the grant of leases, and leases of a long duration, to the immediate cultivators of the soil, are essential to all spirited and large improvement. But the proprietors of the soil in England complain, that leases render their tenantry too independent of them; and the greater proportion of the land of England is cultivated on tenure at will. If the gentlemen of England will sacrifice improvement to the petty portion of arbitrary power which the laws of England allow them to exercise over tenants at will; what must we not expect from the Zemindars of Hindustan, with minds nurtured to habits of oppression, when it is referred to themselves whether they shall, or shall not, have power over the miserable ryots, to whom the law is too imperfect to yield any protection? It is the interest of permanent governments to promote the prosperity of their people, because the prosperity of the people is the prosperity of government. But the prosperity of the people depends entirely upon their freedom. What governments, on this account, have ever promoted freedom? The propensity of the Zemindars was to regard themselves as petty sovereigns.

The effect of *ignorance*, with respect to improvement, is too obvious to require illustration. But it

may be remarked, that it operates with peculiar efficacy in augmenting the force of the most powerful of the causes by which the proprietors of land are made to prevent improvement. The love of domination has always the greatest sway in the most ignorant state of the human mind.

The effect of *large possessions* in preventing those efforts and sacrifices, on which improvement depends, deserved of the Indian legislators profound consideration. It cannot escape the feeblest powers of reflection, that the man, who already enjoys a vast accumulation of wealth, must regard, with comparative indifference, small acquisitions; and that the prospect of increasing his great revenue, by slowly adding the painful results of improvement, cannot operate very powerfully upon his mind. It is the man of small possessions who feels most sensibly the benefit of petty accessions; and is stimulated the most powerfully to use the means of procuring them. It is on the immediate cultivator, when the benefit of his improvements is allowed to devolve in full upon himself, that the motives to improvement operate with the greatest effect. That benefit, however, cannot devolve upon him in full, unless he is the proprietor as well as the cultivator of his fields; and hence, in part, the backwardness of agriculture in some of the most civilized portions of the globe.

There was an opportunity in India, to which the history of the world presents not a parallel. Next, after the sovereign, the immediate cultivators had, by far, the greatest portion of interest in the soil: For the rights (such as they were) of the Zemindars, a complete compensation might have easily been made:

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The generous resolution was adopted of sacrificing to the improvement of the country, the proprietary rights of the sovereign: The motives to improvement which property gives, and of which the power was so justly appreciated, might have been bestowed upon those upon whom they would have operated with a force incomparably greater than that with which they could operate upon any other class of men; they might have been bestowed upon those from whom alone, in every country, the principal improvements in agriculture must be derived, the immediate cultivators of the soil: And a measure, worthy to be ranked among the noblest that ever were taken for the improvement of any country, might have helped to compensate the people of India, for the miseries of that misgovernment which they had so long endured.—But the legislators were English aristocrats; and aristocratical prejudices prevailed.[1]

Instructions for the settlement were issued in Bengal towards the end of 1789, and for the province

[1] This imputation, which has repeatedly occurred in the foregoing pages, is wholly unsupported by any thing but the author's anti-aristocratic opinions. The settlement was not made with the Zemindars with any purpose of creating an aristocracy, but in the honest, though in some respects a mistaken belief, that the Zemindars were the proprietors of the soil. What says the Fifth Report—"The first point proposed in the interrogatories circulated by Government, was intended to determine the person with whom the settlement should be made, *and here no difficulty occurred*, for whatever might be the difference of opinion amongst those who were officially consulted on the theoretical question of proprietary right in the soil, *a general concurrence prevailed* in favour of the settlement being made with the Zemindars." Lord Cornwallis, therefore, listened not to his aristocratical prejudices, but to the general concurrence of the opinions of those who were best likely to be accurately informed on the subject—the servants of the Company. It would have argued extreme folly and presumption, had he set any private opinion of his own in opposition to their presumable knowledge and experience.—W.

of Bahar in the following year. A complete code of regulations was promulgated for the new system in November, 1791. And the land revenue realized in that year from Bengal, Bahar, and Orissa, together with Benares, amounted to 3,02,54,563, sicca rupees, or 3,509,530*l.* It was not, however, before the year 1793, that the decennial settlement was executed in every district; and that the completion of the measure was announced. So perfectly did the ideas of the government at home correspond with the ideas of the Governor-General, that in the early part of that very year, and before the plan was fully carried into execution, authority arrived in India for bestowing upon it the intended permanence by immediate proclamation.

Besides the land revenue, some other duties were levied in India, which were all generally included under the denomination of *Sayer;* and consisted, chiefly, of certain tolls upon the entry or transit of goods, by land or water.[1] These duties, also, the Zemindars, in their capacity of collectors of the revenue, had formerly had in charge. To the Anglo-Indian government, however, it appeared, that the management of the Sayer duties but ill accorded with the

[1] The most general division of the sources of revenue in the Mogul system of finance, is that of *mâl* and *sayer*, the former term which literally signifies wealth or treasure, is used to denote *the permanent revenue* arising from land or other tenements and funds of a fixed durable nature; the second title, which imports fluctuation and change, comprehending *the variable revenue* of every description, from customs on exports and imports, internal duties on the transportation and sale of grain and all kinds of merchandise, professional taxes, and other imposts upon persons and property. The proportion of the sayer to the whole revenue was found, when the collection was separated in 1789-90, to be not more than 4 per cent. Harington's Analysis, ii. 61. Note.—W.

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character of a great landed aristocracy, now imparted, or supposed to be imparted, to the Zemindars. Invention was taxed for the discovery of another plan, by which these duties might be collected. Upon inquiry it appeared, that the difficulties of the business would be very great. The value, too, of the Sayer duties had never yet been very considerable. It was certainly the easiest, and was finally determined to be the best expedient, to abolish them. The tax on spirituous liquors, from moral rather than fiscal motives, was alone reserved.

The taxes of Bengal were thus included, with hardly any exception, in one grand impost, that upon the land. The government, however, added to its income, by the resource of monopoly. There are but two articles of luxury, of which there is any considerable consumption in India; salt, and opium. Under the native governments, the monopoly of salt had usually been sold. It has been already stated in what manner the servants of the company endeavoured, at an early period of its territorial history, to appropriate the benefits of this monopoly; and at what period the Company itself thought proper to become the monopolist. From the period of the assumption of the monopoly till the year 1780, it had been usual to dispose of the manufactories in farm, on leases of five years. In that year Mr. Hastings abolished the system of farming, and placed the manufacture of salt in the hands of government. Servants of the Company were appointed to conduct the business, in the capacity of agents: and the price was annually fixed by the Governor-General in Council. With this arrangement Lord Cornwallis

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no further interfered than by an alteration in the mode of sale, and some rules to protect the workmen. Instead of fixing a price, the commodity was to be sold in small lots by public auction. And as cruelties were practised upon the salt-makers, in confining them to the salt-works, while they were subject to fraud on the part of the natives employed as subordinate agents, certain measures were taken for the prevention of those evils.[1] The salt monopoly produced, at the commencement of the present administration, the sum of 40,00,500 sicca rupees, or 464,060*l.* It had been gradually worked up to the rate of 1,360,180*l*, the sum which it produced on the average of three years preceding 1810.[2] How much of this arose from increased consumption; how much from the severity of augmented price, will appear hereafter.

The monopoly of opium, like that of salt, the Mogul government uniformly sold. In this branch of business, the Company's government did not depart from the practice of its predecessors. The contract was disposed of by private bargain and special favour till the year 1785; when it was exposed to public competition, and consigned to the

[1] A practice prevailed, unauthorized by legislation, but sanctioned by prescription, of compelling certain families in the salt districts to engage in the manufacture at lower terms than those granted to free labourers. This practice was abolished by a Regulation of the Government in 1788: the first clause of which enacts—"That it be a fixed principle in the conduct of the business of the manufacture of salt, that in future no compulsion, on any plea whatever, shall be used to make manufacturers work, except in consequence of a previous engagement, but that their services shall be entirely voluntary."—W.

[2] This is somewhat indistinctly stated. The net average amount of the salt sales for the three years following the adoption of Hastings's agency system in 1780, was 464,060*l.*, from 1783 to 1786, the three preceding the arrival of Lord Cornwallis, it was 522,450*l.* In 1836-7, the gross amount was Rupees 1,40,66,119, or about 1,400,000*l.*

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highest bidder. Regulations were at the same time made for protecting the ryots from the compulsion, which it had been usual to exercise upon them, to cultivate this article at the contractor's price. It was the interest of government, when government became the monopolist, to pay to the ryot, as grower, the lowest possible price. To effect this object, a rate was declared, at which the ryot was compelled to furnish the commodity. Lord Cornwallis complained, that the regulations which had been formed to mitigate the effects of this oppressive system, were by no means adequate to their end; and he added, or substituted, others, of which the beneficial effects were not much superior. One peculiarity it is useful to remark. When the East India Company became the sovereign, it was not only the seller of the monopoly, but it was the principal buyer, too, from its own contractor. As the government fixed the price, at which the contractor was to pay for the opium to the grower; so it fixed the price, at which the contractor was to sell it to the Company. The price at which the Company bound the contractor to furnish it with opium, was less than the price at which it bound him to pay for it to the grower. "Though the result," say the Select Committee of the House of Commons, in 1810, "will sufficiently demonstrate the erroneous tendency of these contracts, yet the mistakes committed in them were not discovered soon."[1] They were not seen by Lord Cornwallis.[2] He continued the system.

[1] Fifth Report, p. 25.

[2] It would be more remarkable if they had not been seen by the contractor. There is some fallacy in the Committee's view of the transaction.—W.

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Beside the changes in the financial, Lord Cornwallis meditated important changes in the judicial department of government. For that part of the judicial business which regards the civil, as distinct from the penal branch of law, the rulers in England, free, as they boasted, from the influence of "abstract theories,"[1] made, by their orders of 1786, a combination of the business of judicature with the business of finance: a mixture of the character of a tax-gatherer with that of the judge. In each district, the same man was collector of the revenue, judge of the Dewannee Adaulut, and moreover head of the police. Of two such offices as those of collector and judge, lodged in the same hands, it was notorious that the one had a very strong tendency to produce a sacrifice of the duties of the other. As a security against that great and glaring evil, the rulers of 1786 prescribed, that the proceedings of the collectors in their financial department, and in their judicial and magisterial departments, should be kept separate and distinct. Upon experience, Lord Cornwallis did not think that this grand expedient was altogether adequate to the end which it was contrived and provided to secure. In a minute, dated the 11th of February, 1793,[2] he stated, that, under this system, the protection of the natives depended solely upon the character of the individual who was sent to govern them. Where the collector was a man of humanity and jus-

[1] It may be remarked with pleasure, as a sign of progressive improvement, that the Select Committee in 1810, have twice, in their Fifth Report, held forth this boast about abstract theories, as an object of contempt.

[2] Appendix No. 9 (A) to Second Report of Select Committee, 1810.

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tice, the people, as under the worst government on earth, would no doubt be protected. But as often as it should happen that the collector was a man of another character, the people were exposed to the greatest injustice. If the collector was oppressive, he himself was his own judge. If he decided iniquitously, where lay the appeal? To another class of revenue officers, whose feelings could not be regarded as impartial; to the Board of Revenue, as Sudder Dewannee Adaulut; a tribunal at such a distance that few indeed of the natives could endure the expense of an appeal. It was therefore resolved that the financial and judicial functions should be disjoined; and the following reasons for that important measure were published to the country: "That while the collectors of the revenue preside in the courts of Mhal Adaulut as judges, and an appeal lies from their decisions to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the revenue department; the proprietors can never consider the privileges which have been conferred upon them as secure; That exclusive of the objections arising to these courts, from their irregular, summary, and often *exparte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties; it is obvious that, if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors; and that individuals who have been aggrieved by them in one capacity can never hope to obtain redress from them in another: That their financial occupations equally disqualify them from administer-

ing the laws between the proprietors of land and their tenants: That other security must, therefore, be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected."[1]

With a view to improve upon this plan of administering justice, Lord Cornwallis devised and established the following scheme. In each district, that is, in the language of the country, each Zillah, and in each of the considerable towns or cities, a Zillah, or city, court, was established. One of the Company's servants, higher in rank than the collector, was the judge. To this judge was appointed a registrar, and one or more assistants from among the junior servants of the Company. Each court was provided with a native, duly qualified to expound the Hindu or Mohammedan law, in cases which turned upon any of these several codes. And all descriptions of persons within the local administration of the tribunal, except British subjects amenable to the Supreme Court, were rendered subject to its jurisdiction.

To obviate the danger of arrears in decision, from the arrival of too many causes to decide, the judge was authorized to refer to his registrar, under an appeal to himself, all suits in which the litigated property was not of considerable amount. The jurisdiction of the registrar was extended at first to 200 rupees, and afterwards even to sums of a higher amount. For determining, in suits regarding personal property, from the value of 50 rupees downwards, native commissioners were appointed; and of these tribunals

[1] Preamble to Regulation II. of 1793.

several, at convenient distances, were established in every Zillah. They were allowed no salary or establishment, but received as remuneration a fee of one *ana* per *rupee*, or a commission of somewhat more than six per cent, upon all sums litigated before them. They acted the part of arbitrators; and their mode of procedure was summary, that of simple rational inquiry, not distorted into a labyrinth, by technical forms. From their decision an appeal might be carried to the Zillah Court. And upon these appeals, as well as those from the jurisdiction of the registrar, the decision of the Zillah Court was final, excepting in one set of cases; namely, those regarding the species of property called in English law *real* property, and of those cases in only that part in which the decision of the inferior court was reversed.

Such was the establishment for primary jurisdiction, or decision in the first instance in the civil department of judicature. A new provision was also devised for the second and ultimate decision, in case of appeal. The Board of Revenue, or the Governor-General in Council, had previously exercised the powers of appellate jurisdiction. But to prevent the inconvenience of their having too much to do, it had been provided (as if unjust decisions on small sums could never happen), that no appeal should be made to them, unless the property in dispute amounted to the value of 1000 sicca rupees. By experience it was found, that among the indigent natives very few suits arose for sums so large as 1000 rupees. From that security for justice, therefore, which is constituted by the power of appeal, the natives were, in point of fact, almost wholly excluded: and, indeed, had the limits

of appeal been enlarged, the expense of repairing to Calcutta would in most cases have rendered the exclusion equally complete.

Regarding this as an evil, Lord Cornwallis established four tribunals of appeal: one in the vicinity of Calcutta, one at the city of Patna, one at Dacca, and a fourth at Moorshedabad. They were constituted in the following manner. Three judges, chosen from the civil department of the Company's service, and distinguished by the appellations of first, second, and third; a registrar, with one or more assistants from the junior branch of the European servants; and three expounders of the native law, a Cauzee, a Mooftee, and a Pundit, formed the establishment of each court. The privilege of appeal was still confined to sums of a given though reduced amount; and by subsequent regulations a more humane and rational policy was adopted, an appeal being allowed from every primary decision of the Zillah Courts. Even the appellate jurisdiction of the Zillah Courts might be reviewed by this superior Court of appeal, commonly known by the name of the Provincial Court, in those cases in which it saw occasion to interpose. It was also, in the exercise of its appellate jurisdiction, empowered to take fresh evidence; or, for the sake of receiving fresh evidence, to send back the cause to the original court.

Another and higher, a third stage of jurisdiction, was erected. A tribunal, entitled the Court of Sudder Dewannee Adaulut, was still set up at Calcutta. It was composed of the Governor-General, and the members of the council, assisted by the Cauzy ul Cauzaut, or head cauzy, two moofties, two pundits,

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a registrar and assistants. They received appeals from the Provincial Courts, or courts of primary appeal; at first for sums of 1000 rupees. At this amount, however, appeals were numerous: decision on so many was laborious to the Governor-General and Council. The number of appeals was, at any rate, no proof of the want of need for the privilege of appeal. What was the remedy? To raise the sum on which appeal was admitted: that is, to deny the privilege to the poorest class.[1] By act 21 Geo. III. c. 70, sect. 21, an appeal lay to the King in Council for all sums exceeding 50,000 rupees.

Among the other prejudices of those who at this time legislated in India with so much of good intention for the people of Hindustan, were the prejudices which owe their birth to the interests, and hence to the instructions of lawyers. Of these it is one of the most remarkable, and the most mischievous, that to render judicial proceedings intricate by the multiplication of technical forms, by the rigid exaction of a great number of nice, obscure, pedantic, and puzzling rites and ceremonies, tends to further the ends of

[1] It may appear to be ludicrous; but as a far better expedient than this, I should very seriously recommend the determination of the matter by lot. Suppose the Court can find time to decide upon twenty appeals in a month, and that sixty arrive. By cutting off the forty in which the amount of property is least, you make it visible to the inferior judge in what cases he may commit iniquity, free from that check which the prospect of appeal imposes. Reject the forty by lot, and as the inferior judge can never know, on which of his decisions the review of the Superior Court will attach, the check is, with some degree at least of efficiency, spread over the whole of his decisions. At any rate the suitors are treated impartially, and the interest of those with the small lots of property is not sacrificed, as, according to all systems of law, that ever yet have had any existence, it has been very generally sacrificed, to the interest of those with the large.

justice. This unhappy instrument of justice was not forgotten in the present reforms. For courts of law, provided for a people, among whom justice had always been distributed in the method of simple and rational inquiry, was prescribed a course of procedure, loaded with minute formalities; rendered unintelligible, tedious, and expensive, by technical devices. Of the intricacy and obscurity thus intentionally created, one effect was immediately seen; that the candidates for justice could no longer plead their own causes; that no one could undertake to present a cause to the mind of the judge according to the nicety of the prescribed and intricate forms, unless he belonged to a class of men who made it their trade to remember and observe them. The necessity of an establishment of hired advocates; in Indian phrase *vakeels*, a word of very general application, meaning almost any man who is employed on any occasion to speak and act for another; was therefore acknowledged. A system of rules was prescribed for the formation and government of a body of native pleaders; to whom pay was provided by a small retaining fee, and a per centage on the amount of the litigated property. From this, one inconvenience immediately flowed; an inconvenience from which the establishment of mercenary pleaders has never yet been freed, but which by this regulation was carried up to its greatest height, and there made secure from descent; that the class of causes which is infinitely the most important of all, could not fail to be treated with comparative neglect, and to sustain a proportionate failure of justice.

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In one important particular, common sense and pure intention guided the present ruler into the good path, wherein his successors, alas! had not the wisdom to follow him. When the Company abolished the *choute*, or exaction for the judge of twenty-five per cent. upon the value of the litigated property, they established in lieu of it what was called an institution fee, or a sum to be paid upon the commencement of a suit. Any obstruction to the demand for justice, Lord Cornwallis treated as an evil; and appears to have had some perception more or less clear, of the important truth, that where there is not *cheap justice*, in the great majority of cases there is no justice. He abolished the impost upon the commencement of a suit; prohibited all fees of court; and restricted the expense of justice to the remuneration of the pleader, and the necessary conveyance and maintenance of witnesses. With regard to the judges, he emphatically insisted upon their being paid entirely and exclusively by salary, "without receiving any kind of perquisite whatever:"[1] And he who understands the injuries which justice has sustained and yet continues to sustain, for the benefit of judges' fees, will appreciate the gratitude which for this determination, if for nothing else, he deserves from mankind.

Such was the provision made by Lord Cornwallis for the civil department of judicature: he was not less deeply impressed with the necessity of substantial reforms in the penal.

[1] See his address to the Court of Directors, dated the 2nd of August, 1789, printed by order of the House of Commons, 8th of March, 1790.

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In his address to the Court of Directors, under date the 17th of November, 1790, he said; "Your possessions in this country cannot be said to be well governed, nor the lives and property of your subjects to be secure, until the shocking abuses, and the wretched administration of justice in the foujedarry department can be corrected. Anxious as I have been, to supply a speedy remedy to evils, so disgraceful to government, so ruinous to commerce, and indeed destructive to all civil society, it has still appeared to me to be so important as to make it necessary for me to act with great circumspection. But I am so strongly incited by motives of humanity, as well as of regard to the public interest, to establish, as early as possible, an improved system for the administration of criminal justice, that I shall use every exertion in my power to effect it, before my embarkation for Madras."[1]

When the opinions, which Lord Cornwallis expressed of the different departments of the Indian government, at the time when he undertook his

[1] Letter from Lord Cornwallis to the Court of Directors, ordered to be printed by the House of Commons, 16th May, 1791. He had, in a preceding letter, dated the 2nd of August, 1789, expressed himself in similar language. "The system for the administration of criminal justice has long attracted my serious attention, and is, in my opinion, in a most exceptionable state. I feel myself called upon, by the principles of humanity, and a regard for the honour and interest of the Company, not to leave this government, without endeavouring to take measures to prevent, in future, on one hand, the cruel punishments of mutilation, which are frequently inflicted by the Mohammedan law, and on the other, to restrain the spirit of corruption which so generally prevails in native courts, and by which wealthy offenders are generally enabled to purchase impunity for the most atrocious crimes. . . .I conceive that all regulations for the reform of that department would be nugatory, whilst the execution of them depends upon any native whatever." Ordered to be printed by the House of Commons, 8th March, 1790.

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reforms, are brought together, it would not be easy to draw a stronger picture of a people suffering by the vices of government. The administration of justice through all its departments, in a state the most pernicious and depraved; the public revenue levied upon principles incompatible with the existence of private property; the people sunk in poverty and wretchedness; more than one-third of the country a desert, and the rest hastening to desolation: Such is the picture on the one hand. Pictures of an unexampled state of prosperity were, nevertheless, held forth, at this very moment, by speeches in parliament,[1] to the parliament, and the nation; and the flattering pictures, as they were the pictures of the minister, governed the belief of parliament, and through parliament that of the nation, wherein, to most persons indeed, the facts constituting the real state of the case were wholly unknown.

For criminal judicature or jail delivery, four tribunals were erected. For judges on these

[1] See The Parliamentary History, for the speeches on Indian affairs of the ministers in general, more especially those of Mr. Henry Dundas, the President of the Board of Control.—M. It may be doubted if the light in which Lord Cornwallis's picture is here represented is entirely correct. It does not appear that he considered the administration of justice most pernicious and depraved in all the departments. Although he speaks strongly of the abuses in *one* department, that of the police, the reforms in the administration of civil law were matters rather convenient than urgent. It does not appear that private property was, in any degree, endangered by the mode in which the revenues were collected; and although there were many tracts of waste land, there is no reason to believe that the whole was hastening to desolation. That there were many defects in the constitution of the government, was no doubt true—it is true at the present day; but it is equally certain that the country was in a state of progressive improvement, and that the statements made in Parliament were not wholly without foundation—the revenue was permanently augmented, and the commerce was greatly enlarged.—W.

tribunals, the judges of appeal in the four provincial courts were appointed, with the same auxiliaries, in the shape of registrar, assistants, and native officers, as were appointed for them in the civil courts of appeal. The business of penal judicature was to be performed by circuit. The jail deliveries at the four principal cities, the seats of the provincial courts, were to be held every month; those in the district of Calcutta four times, and those in the remaining Zillahs of the country twice in the year. According to the plan of Lord Cornwallis, the judges of each of the four courts of appeal formed two courts for the circuit: one, consisting of the first judge, accompanied by the registrar and Mooftee; and one consisting of the two remaining judges, attended by the second assistant and the Cauzee.

While the judges of appeal were, in this manner, employed, the courts of appeal were unavoidably shut. The inconvenience of this was soon very heavily felt. In 1794, it was ordained, that one of the judges should remain to execute the business of the civil court; while the other two proceeded to hold the penal courts by circuit. By an unhappy rule, however, of the civil court, requiring that two judges should be present for decision upon appeals, little relief was obtained by this measure. It was, therefore, in 1797, directed that two of the judges should remain for the business of the civil appeal court, and that only one should be spared for the business of the penal circuit.

Beside the courts of circuit, the utility was still recognised of a superior criminal tribunal at the

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seat of government, As in the case of the Sudder Dewnnee Adaulut, it was composed of the Governor-General and the Members of the Supreme Council, assisted by the head Cauzee and two Mooftees. Nizamut Adaulut, in the language of the country, was the name, by which this high criminal court was distinguished.

In the performance of the great penal branch of the judicial duties, the judges of circuit, periodically, repair to the places which are the seats of the Zillah courts, and remain till they have gone through the calendar; in other words have investigated every charge which is contained in the list of charges presented to them, upon their arrival. The accusation, with its evidence; the defence with its evidence, or the confession of the prisoner when he happens to confess, are heard before the judge, and recorded in writing, The Cauzee, or Mooftee, who has witnessed the proceedings, is then required to write at the bottom of the record the sentence which is required by the Moslem law, and to attest it with his signature and seal. With this decision it is optional in the judge to concur or to disagree. If he disagree, the case is referred to the Nizamut Adaulut; and in all cases inferring the higher degrees of punishment, the sentence of the itinerant court is not executed, till confirmed by that presiding tribunal. A copy of the record, with every material paper delivered into court, is transmitted with all convenient despatch to the Nizamut Adaulut, accompanied by a letter stating the opinion of the judge on the evidence adduced.

The judges are required, on their return from the

circuit, to make a report, containing an account of every thing which has appeared to them to be worthy of the notice of government, in the perfections or imperfections of the law; in the condition of the jails; in the management of the prisoners; and even in the moral and physical condition of the people. It is always a favourable sign of a government to provide for its own information respecting the error of its own proceedings, and the means of carrying on to perfection what is yet mingled with defect. To require periodical reports from the judges, for the purpose of making known the evils which remained without a remedy, is a measure deserving no common tribute of applause. Were a similar operation carried over the whole field of government, and made sufficiently faithful and searching, the melioration of governments, and with it the happiness of the human race, would proceed with an accelerated pace. One consideration, however, which it is of great importance to hold constantly in view, has been well suggested on this very occasion by the Committee of the House of Commons, appointed to report on the affairs of India in 1810. "It is hardly," they say, "to be supposed that public servants, in such a case, would lean to the unfavourable side; or, without sufficient foundation, transmit accounts which would prove disagreeable to the governed to receive. A communication of this nature might be rather suspected of painting things in colours pleasing to the government, with the view of bringing the writer into favourable notice."[1] It is a matter of experi-

[1] Fifth Report, p. 65.

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ence, that this propensity, in general, is uncommonly strong. A wise government therefore would always take, with very considerable allowance, the flattering picture presented in the reports it might receive; but in the language of the same Committee, "Would regard them as worthy of particular consideration, as often as defects are stated to exist, and evils are represented to prevail."[1] How opposite the ordinary conduct of governments, how effectual the measures which they take to hear no accounts but flattering ones, to discountenance and deter the suggestion of defects, the world is too old to need to be informed.

Such was the apparatus provided by Lord Cornwallis for the administration of law. A correspondent consideration ought to have been, what was the law which through this machinery was to be administered.

When rights are considered as already established, the object of a body of law is to define and secure them. Among the people of India rights to a great extent were already established; and there were two systems of law which respected them. It was an important question to what degree those systems were calculated to answer the purposes of law; that is, to mark out, by clear, precise, and unambiguous definitions, what were rights, and what the violations of them. It was a very lame and defective provision for the distribution of justice, to appoint a number of persons for the administration of law, if there was no law, or no tolerably good law, for them to administer. The standards of

[1] Fifth Report, p. 65.

Hindu and Moslem law, by which, respectively, the rights of the Hindu and Mohammedan population were to be governed, were their sacred books: the Shasters and the Khoran. These were just about as well calculated for defining the rights of the people of England.[1] There was, by consequence, in India, nothing which in reality deserved the name of law. Its place was supplied by the opinions of the Pundits and Cauzees, which were liable to all the fluctuations, which diversity of thoughts, and the operation of interest, were calculated to produce. Every thing was vague, every thing uncertain, and, by consequence, every thing arbitrary. The few points which could be regarded as in any degree determinate and fixed, covered a very small portion of the field of law. In all the rest, the judges and interpreters were at liberty to do what they pleased; that is, to gratify their own interests and passions, at the expense of the candidates for justice, to as great a degree, as the ignorance or negligence of the ruling power would permit. With the law, in such a condition as this, it is evident, that any thing like a tolerable administration of justice was altogether impossible. The first thing, therefore, first in point both of order and importance, was, to have prepared a set of exact definitions comprehending rights, and those viola-

[1] The errors of our author upon these subjects have been already pointed out. The standards of Hindu and Mohammedan law are, in a very restricted acceptation, their sacred books. The word Shaster is of very wide and vague signification, and, as here employed, has no meaning at all. The social institutions of the Hindus are based upon the Vedas, but their laws are laid down in a variety of works written upon the subject. In like manner the standards of Mohammedan law are numerous and comprehensive, and are very slightly dependent upon the Koran.—W.

tions of them which it is the business of law to prohibit; in other words, it was proper to have drawn up a clear and unambiguous digest of law, in both its departments; the prohibitive or penal, as well as the creative or civil. The thought of rendering this great service to justice and to human nature, seems never to have visited the mind of the Governor-General and his advisers. To this day, it has hardly visited the mind of any Indian ruler; though to provide an expensive machinery of judges and courts without a body of law, is in point of reason as great an absurdity, as to provide an expensive apparatus of cooks and kitchen utensils, without any victuals to cook. Is it a wonder, that the administration of justice in India should still be a disgrace to a government conducted by a civilized people?[1]

[1] The justice of this accusation may be reasonably questioned, and although like every thing human, the administration of the law in India may be imperfect, yet that it is not so disgracefully defective as is here intimated is proved by the general prevalence of order and tranquillity in the Company's territories, by the low ratio of crime, and by the universal feeling of security to both life and property, which prevails amongst the people. That the government should have opened its legislative career with definitions and a digest, is to expect that a man should become an adept in a science before he has mastered its rudiments. The lesson was to be learned: to have waited until it was learned, without taking any steps to acquire it, was a sure way never to learn it at all. To legislate without knowledge may be an innocent amusement for a philosopher, but it is a dangerous practice for a government. Experience must be gained, even at the cost of imperfection and error in the process of making the acquisition, before the circumstances and relations indispensable to accurate definitions and unambiguous digests can be known or provided for. It may be doubted, even in the present day, if India is ripe for a code of laws, although the attempt has been instituted—a code stands still—society does not; and the condition of British India has been, for the best part of a century, and will be, for a still longer period, in perpetual motion.—W.

The irrational notion appears to have established itself in the minds of most Englishmen, that courts, or tribunals, are also law; and that when you have established tribunals, you have not merely provided an instrument for the administration of law, if any law exists; but have provided law itself. Nothing, it must be owned, was ever better calculated for generating so absurd an opinion, than the state of the law in England, and the efforts of English lawyers, whose interests it eminently promotes. In England, extraordinary as it may sound, the courts have been at once tribunals, and law. In England, as in India, the courts were originally set up without law. What they did was to make law for themselves. In that deplorable condition the business of law in England remains. The greater part of the rights of Englishmen depend upon nothing better than unwritten, undefined law, generally denominated common law; that is, any thing which the judges choose to call law, under no other restrictions than certain notions, to a great degree arbitrary, of what has been done by other judges before them. Englishmen in general have no conception of the extent to which they lie under a despotic power in the hands of the judges; and how deeply it concerns them to see that despotic power taken away.

It is remarkable, notwithstanding this, that Lord Cornwallis has expressed very strongly, both by words and example, the great utility, or rather absolute necessity, if the ends of justice are the ends in view, that every law should be fixed, by written, permanent expressions; and, what is more, that it

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should be accompanied by the reasons upon which it is grounded. In the preamble to one of his enactments, he said; "It is essential to the future prosperity of the British in Bengal, That all regulations which may be passed by government, affecting, in any respect, the rights, persons, or property of their subjects, should be formed into a regular code; and printed, with translations in the country languages: That the grounds on which each regulation may be enacted, should be prefixed to it: And that the courts of justice should be bound to regulate their decisions by the rules and ordinances which those regulations may contain." If all this is of so much importance, in the case of regulations for only the modes of administering law; what must it not be for the matter of law itself? And what is to be thought of the state of legislation in India, and in Great Britain, the people of both of which are still deprived of such an advantage, "essential to their prosperity?"—"A code of regulations," continues the preamble, "framed upon the above principles, would enable individuals to render themselves acquainted with the laws, and the mode of obtaining speedy redress against every infringement of them: The courts of justice would be able to apply the regulations, according to their true intent: Future administrations would have the means of judging how far the regulations had been productive of the desired effect, and, when necessary, of altering them, as experience might direct: And the causes of future prosperity or decline would always be traceable in the code to their source."[1] The gra-

[1] Preamble to Regulations xli. of 1793.

titude of mankind is due to a government, which, thus solemnly, promulgated to the world the beneficent creed; That it is only by a code, that is, laws existing in a given form of words, that the people can know the laws, or receive protection from them: That it is only by means of a code, that courts of justice will apply the laws according to their true intent: That the defects of all ordinances of law ought to be experimentally traced; and corrected whensoever known: And that the causes of the decline or prosperity of nations may always be found, as at their source, in the state of the laws. Opinions more important to the interests of human beings never issued from human lips.

By the reforms of Lord Cornwallis, however, almost wholly confined to the instruments of judicature, no alterations were made in the state of the law, except that the mutilations, and some other cruelties in the native modes of punishing were abolished, and certain modes, very liable to abuse, of enforcing payment of debt, were forbidden; no coercion for the recovery of debt, even in the case of the revenue, being allowed, except through the medium of the courts of law.

Beside the dispensation of justice, in deciding upon rights, and in punishing wrongs, the protection of society requires that provision, as effectual as possible, should be made, for preventing evil; for checking crimes, in the act of commission; and for ensuring the persons of offenders for justice. The system of operations and powers, destined for the performance of these services, goes, in the languages of modern Europe, by the unappropriate name of police.

The native system of police, the powers of which,

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in arbitrary exercise, were confided to the Zemindars with their armed followers, in the country; and to a set of officers, called Cutwals, with armed followers, in cities; was abolished. From both these sets of officers all powers were taken away. Instead of the previous expedients, the judges of the Zillah courts were vested, in quality of magistrates, with powers of apprehending and examining all offenders. On slight offences, importing a trivial punishment, they might pass and execute sentence: in other cases, it was their business to secure the supposed delinquent for trial in the court of circuit, and that, either by committing, or holding him to bail, as the gravity of the case might seem to require. Each Zillah was divided into districts of ten coss, or twenty miles square; and in each of these districts the judge was to establish a darogah, or constable, with a train of armed men, selected by himself. The darogah was empowered to apprehend on a written charge, and to take security, in the case of a bailable offence, for appearance before the magistrate. The cities of Dacca, Patna, and Moorshedabad were divided into wards, each of which was guarded by a darogah and his party, all under the ultimate superintendence of the magistrate, but subject immediately to the management of a head darogah of the city, who received the old name of Cutwal, and to whom the regulation of the market was consigned.

The magistrate was commanded to present to the Nizamut Adaulut, a report, at the end of every month, embracing the following particulars: 1. Persons apprehended, with name, date of charge, order for punishment, commitment for trial, release; 2.

Casualties in regard to prisoners, by death, and removals: 3. Sentences in the court of circuit: 4. Trials under reference to the Nizamut Adaulut: 5. Sentences received from the Nizamut Adaulut: Every six months he was to transmit to the same authority a report of all convicts under confinement: And by a subsequent regulation, he was every year to present two additional reports; one, of all criminal cases depending before him; and another, of the material circumstances of all the robberies and higher crimes, committed during the course of the preceding year, within the Zillah to which he belonged.[1]

CHAPTER VI.

Result of Lord Cornwallis's Financial and Judicial Reforms.

Of the regulations, constituting this great revolution in the government of the Indian people, the natural consequences were, within a few years, pretty fully developed in practice; and the present is perhaps the occasion on which the instructive picture of them can with most advantage be presented to view.

[1] As authorities for the account of these institutions, see the Code of Regulations, published in 1793, and the Fifth Report of the Committee on Indian Affairs in 1810.

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The trespass upon chronological order, in the case of events which scarcely fall into the ordinary channel of narration, will be amply compensated by the advantage of surveying, in immediate sequence, institutions and their results.

According to the order in which the institutions were considered, the consequences of the new system of finance come first to be described. Its more immediate object was, to establish a landed aristocracy in the persons of the Zemindars. That project, whatever character may be thought to belong to it, has completely failed.

In default of payment of their taxes on the part of the Zemindars, the security reserved for government was, to put up to sale as much of the land as would suffice to discharge the arrears. The important question, of judicature with a multitude of technical forms, or judicature without a multitude of technical forms, was curiously illustrated on this occasion. The government had established courts of law, and appointed for them a numerous list of forms through which it required much time to pass. In their own case, however, it would, they perceived, be highly desirable to obtain speedy justice. To obtain speedy justice, they saw, it would be absolutely necessary to be exempted from technical forms. To what expedient then had they recourse? To the abolition of technical forms? No, indeed! They made a particular exception of their own case. They enacted that in all suits for rent or revenue, the courts should proceed by summary process; nay, further, that in such suits the proceedings should be exempted from those fees and expenses to which other candidates for

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justice were appointed to submit. By a high and conspicuous act, more expressive than words, they declared that one thing was conducive, or rather essential, to justice. They established, by their legislative authority, the very reverse. On what conceivable principle, was speedy and unexpensive justice good for the government, and not good for the people? From which of its imaginary evils was it exempt in the case of the government, and not equally so in the case of the people.

With how much inaccuracy and ignorance the measure had been taken of the moral, intellectual, and political state of the Zemindars, when it was supposed that, by rendering them proprietors of the land, under a fixed but heavy land-tax, provision was made for their prosperity, for the improvement of the country, and the happiness of the great body of the people, experience early evinced.

The selling of the lands immediately began; and proceeded with a rapid pace. In the year 1796, the land advertised for sale comprehended a rent-roll of 28,70,061 sicca rupees;[1] which, according to the total assessment, was nearly one-tenth of the whole of Bengal, Bahar, and Orissa, in a single year.[2] By the progress of this operation, the whole class of the ancient Zemindars, instead of being erected into an aristocracy, was speedily destroyed. In 1802, Sir Henry Strachey, in his answer to a list of interrogatories which had been circulated to the judges, asserted that "an almost universal destruction" had overtaken the Zemindars; and that if any survived,

[1] Fifth Report, ut supra, p. 56.

[2] Vide sum total, supra, p. 493.

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A cause which accelerated, but by no means produced, the ruin of the Zemindars (for the incompatibility of their characters with the situation in which they were placed, led infallibly to the same result), was the delay which they experienced in obtaining payment from the ryots. The government had given to themselves the benefit of summary process with regard to the Zemindars. But they left the Zemindars to the tedious progress through all the technical forms of the courts in extracting payment from the ryots. Under the observance of many tedious forms the decisions of the courts were so slow, that in the space of two years the accumulation of undecided causes threatened to arrest the course of justice. In one district alone, that of Burdwan, the suits pending before the judge exceeded thirty thousand; and it appeared by computation upon the established pace of the court, that no candidate for justice could expect to obtain a decision during the ordinary period of his life.

The collector of Burdwan stated the matter correctly, in reporting to government the following complaint of the Raja; who "submits it," he says, "to your consideration, whether or no it can be possible for him to discharge his engagements to government, with that punctuality which the regulations require, unless he be armed with powers, as prompt to

[1] Answer to Interrogatories, parag. 7, in the Fifth Report, ut supra, p. 537.

enforce payment from his renters, as government had been pleased to authorize the use of, in regard to its claims on him: and he seems to think it must have proceeded from an oversight, rather than from any just and avowed principle, that there should have been established two modes of judicial process, under the same government; the one, summary, and efficient, for the satisfaction of its own claims; the other, tardy, and uncertain, in regard to the satisfaction of the claims due to its subjects; more especially in a case like the present, where ability to discharge the one demand necessarily depends on the other demand being previously realized."[1]

The effects of this system upon the minds, as well as upon the condition of the Zemindars, cannot be doubtful. In answer to an inquiry of government in 1802, the collector of Midnapore said; "All the Zemindars with whom I have ever had any communication in this, and in other districts, have but one sentiment, respecting the rules at present in force for the collection of the public revenue. They all say, that such a harsh and oppressive system was never before resorted to in this country; that the custom of imprisoning landholders for arrears of revenue, was, in comparison, mild and indulgent to them: that, though it was no doubt the intention of government to confer an important benefit on them by abolishing this custom, it has been found, by melancholy experience, that the system of sales and attachments, which has been substituted for it, has,

[1] Letter from the Collector of Burdwan to the Board of Revenue, dated 9th January, 1794; Fifth Report, ut supra, p. 59, and App. No. 8.

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in the course of a very few years, reduced most of the great Zemindars in Bengal to distress and beggary; and produced a greater change in the landed property of Bengal, than has, perhaps, ever happened in the same space of time, in any age or country, by the mere effect of internal regulations."[1]

"The great men formerly," says Sir Henry Strachey, "were the Mussulman rulers, whose places we have taken, and the Hindu Zemindars. These two classes are now ruined and destroyed."[2]

We have thus seen the effects of the new system upon the Zemindars. Let us next endeavour to trace its effects upon a much more important class of men, the ryots. Unfortunately, for this more interesting part of the inquiry, we have much more scanty materials. In the documents which have been exhibited, the situation of the ryots is in a great measure overlooked. And it is from incidental circumstances, and collateral confessions, that we are enabled to form a judgment of their condition. This result itself is, perhaps, a ground for a pretty decisive inference; for if the situation of the ryots had been prosperous, we should have had it celebrated, in the loftiest terms, as a decisive proof, which surely it would have been, of the wisdom and virtues of our Indian government.

When it was urged upon Lord Cornwallis, by Mr. Shore, and others, that the ryots were left in a great measure at the mercy of the Zemindars, who had always been oppressors, he replied, that the perma-

[1] Fifth Report, p. 60.

[2] Answer to Interrogatories, 30th Jan. 1802, Ibid. p. 536.

nency of the landed property would cure all those defects; because, "where the landlord has a permanent property in the soil, it will be worth his while to encourage his tenants, who hold his farm in lease, to improve that property." It has already been shown how inapplicable this reasoning was to the case which it regarded. It now appears that the permanency, from which Lord Cornwallis so fondly expected beneficial results, had no existence; that the plan which he had established for giving permanency to the property of the Zemindars, had rendered it less permanent than under any former system; had in fact destroyed it. The ryots, left without any efficient legal protection, were intrusted to the operation of certain motives, which were expected to arise out of the idea of permanent property; and, practically, that permanence had no existence. The ryots were, by consequence, left altogether without protection.

"Fifty means," says a very intelligent and experienced servant of the Company, "might be mentioned, in which the ryots are liable to oppression by the Zemindars, even when pottahs have been given. The Zemindars will make collusive engagements, and get ryots to do so. Bajeh Kherch, and village expenditure, will go on, at a terrible rate, as it does in the Circars; and where I have no doubt but there are farmers, and under farmers, and securities, and all the confusion that arises from them; that pottahs are not given, and that village charges are assessed on the ryot as formerly."[1]

[1] Mr. Thackeray's Memoir, April, 1806, Fifth Report, p. 914

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It is wonderful that neither Lord Cornwallis, nor his advisers, nor his masters, either in the East India House or the Treasury, saw, that between one part of his regulations and the effects which he expected from another, there was an irreconcileable contradiction. He required, that fixed, unalterable pottahs should be given to the ryots; that is, that they should pay a rent which could never be increased, and occupy a possession from which, paying that rent, they could never be displaced. Is it not evident, that in these circumstances, the Zemindars had no interest whatsoever in the improvement of the soil? It is evident, as Mr. Thackeray has well remarked, that in a situation of this description, it may be "the Zemindar's interest not to assist, but ruin the ryot; that he may eject him from his right of occupancy, and put in some one else, on a raised rent; which will often be his interest, as the country thrives, and labour gets cheap."[1]

It is by the judges remarked, that numerous suits are instituted by the ryots for alleged extortions. The Zemindar lets his district in farm to one great middleman, and he to under farmers, to whose exactions upon the ryots it appears that there is really no restriction. In one of the reports, in answer to the queries of 1802, we are informed, that "the interchange of engagements between the parties, with few exceptions, extends no further than the Zemindar's farmer, who is here called the sudder (or head) farmer, and to those among whom he subdivides his farm in portions. An engagement between the

[1] Mr. Thackeray's Memoir, April, 1806, Fifth Report, p. 917.

latter and the cultivator, or heads of a village, is scarcely known, except the general one, to receive and pay, agreeable to past and preceding years; and for ascertaining this, the accounts of the farm are no guide. The Zemindar himself, seeing that no confidence is to be placed in the accounts rendered him of the rent-roll of the farm, from the practice which has so long prevailed of fabrications and false accounts, never attempts to call for them at the end of the lease; and, instead of applying a corrective to the evil, increases it, by farming out the lands literally by auction; and the same mode is adopted in almost every subdivision of the farm."[1] This is the security which is afforded to the cultivators, by the boasted permanency of the property of the Zemindars. That any prosperity can accrue to this class of the people, or encouragement to agriculture, from such an order of things, is not likely to be alleged.

The relation established by Cornwallis between the ryot and the Zemindar, was remarkable. The Zemindar had it in his power to pillage the ryot; but the ryot had it in his power to distress the Zemindar. He might force him to have recourse to law for procuring payment of his rent; and the delay and expense of the courts were sufficient to accomplish his ruin. It is the habit of the people of India to pay nothing until they are compelled. A knowledge that they might always ward off the day of payment to a considerable distance, by waiting for prosecution, was a sufficient motive to a great proportion of the ryots to pursue that unhappy course,

[1] Answer of Mr. Thompson, Judge and Magistrate of Burdwan, Fifth Report, p. 544.

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which, in the long run, was not less ruinous to themselves than to the Zemindars.

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The following picture of these two great classes of the population, is presented by a high authority. "By us all is silently changed. The ryot, and the Zemindar, and the gomastah, are by the levelling power of the Regulations, very much reduced to an equality. The protecting, but often oppressive, and tyrannical power of the Zemindar, and the servitude of the ryot are at an end. All the lower classes,—the poorest, I fear, often in vain—now look to the Regulations only, for preserving them against extortion and rapacity. The operation of our system has gradually loosened that intimate connexion between the ryots and the Zemindars which subsisted heretofore. The ryots were once the vassals of their Zemindar. Their dependence on the Zemindar, and their attachment to him, have ceased. They are now often at open variance with him; and, though they cannot contend with him on equal terms, they not unfrequently engage in law-suits with him, and set him at defiance. The Zemindar, formerly, like his ancestors, resided on his estate. He was regarded as the chief and the father of his tenants, from whom all expected protection, but against whose oppressions there was no redress. At present the estates are often possessed by Calcutta purchasers, who never see them; and whose agents have little intercourse with the tenants, except to collect the rents."[1]

"The ryots," says the same excellent magistrate,

[1] Report by Sir H. Strachey, in 1802; Fifth Report, p. 564.

"are not, in my opinion, well protected by the revenue laws; nor can they often obtain effectual redress by prosecuting, particularly for exaction and dispossession." And these are the very injuries to which they are most exposed. The reason Sir Henry immediately subjoins. "The delay and expense attending a law-suit are intolerable, in cases where the suitor complains, which almost invariably happens, that he has been deprived of all his property. The cancelling of leases, after the sale of an estate for arrears, must frequently operate with extreme harshness and cruelty to the under tenants."[1]

The Indian Government, in their observations addressed to the court of Directors, "appeared," say the Select Committee of the House of Commons, "unwilling to admit that the evils and grievances complained of, arose from any defects in the public regulations. The very grounds of the complaints, the government observed, namely those whereby the tenantry were enabled to withhold payment of their rents, evinced that the great body of the people, employed in the cultivation of the land, experienced ample protection from the laws, and were no longer subject to arbitrary exactions."[2] That the great body of the people enjoyed protection, because they could force the Zemindars to go to law for their rent, is an inference which it would be very unwise to trust; which appears to be, as there is no wonder that it should be found to be, contrary to the fact.

[1] Sir H. Strachey's Answer to Interrogatories, Fifth Report, ut supra, p. 528.

[2] Fifth Report, ut supra, p. 55.

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But suppose the fact had been otherwise; and that the ryots received protection; was it no evil, upon the principle of the Regulations, that the Zemindars were ruined? Yet so it is, that the organ of government in India found this ruin, when it happened, a good thing; affording, they said, the satisfactory reflection, that the great estates were divided into small ones; and that, by change of proprietors, the land was transferred to better managers.[1]

Upon the review of the conduct of the government, in thus praising, one after another, the results of the new system, whatever they might be, those originally expected from that system, or the very reverse; the same Committee of the House of Commons, though commonly very reserved in their censorial essays, observe, "It was thus, in explaining to the authorities at home the effects and tendency of the new system, that the government in India generally found something to commend. When the operation of the regulations proved adverse to their expectations, in one respect, in another, something had occurred to console them for the disappointment."[2] In fact, they only pursued the grand highway, the beaten common track, of misrepresentation; a track in which the instruments of government, as far as concerns their own operations and the apparatus to which they have attached their interests, can seldom be without a motive to tread. The evil effects, which cannot be concealed, are represented as trivial. All those, which are not calculated to force themselves upon the public attention, are care-

[1] Fifth Report, ut supra, p. 57. [2] Ibid. p. 57.

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fully covered from view. Every effect, which is either good, or absurdly supposed to be so, is exaggerated and extolled. And many good effects, which it is in reality of a nature to obstruct rather than produce, are ascribed, by some through ignorance, by others from fraud, to the object, whatever it is, which it is the wish to applaud.

The unhappy reluctance of the Indian rulers, to see any imperfection in the scheme of government which they had devised, was, however, at last, overcome. A Regulation, or law, was promulgated in 1799, the preamble of which acknowledged, "that the powers allowed the landholders for enforcing payment of their rents, had, in some cases, been found insufficient; that the frequent and excessive sales of land, within the current year, had been productive of ill consequences, as well towards the land proprietors and under tenants, as in their effects on the public interest, in the fixed assessment of the land-revenue; that the Zemindars were understood to have made purchases of their own lands in fictitious names, or in the names of their dependants, the object of which was to procure, by fraudulent means, a reduction of the rate of assessment."[1] For remedy of the evils, now at last acknowledged, it was enacted, that the Zemindars should have the use of summary process, with the power of attachment and sale, in realizing their rents. The reflections of Sir Henry Strachey, upon this reform of the new law, eminently merit the attention of both the philanthropist and the statesman. "In passing," says this

[1] Fifth Report, ut supra, p. 61.

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highly-respectable witness, "the seventh regulation, 1799, it was, I believe, the design of government (a very reasonable and liberal design in my opinion) to enable the Zemindars to collect their just demands of rent, with punctuality, and without expense. And I think it would have been just and considerate at the same time, to have facilitated to the ryots the means of obtaining redress against extortioners. But the fact is—the ruin of one Zemindar being more conspicuous at the Sudder than that of 10,000 ryots, his interests naturally attract the attention of the legislature first; and as, in the proposal of any plan connected with finance, it is required to set out with the maxim, that the sudder jumma can on no pretence be lowered, there remains no other resource for helping the Zemindars, than the restoration of part of the power they possessed of old to plunder their tenants. Exaction of revenue is now, I presume, and, perhaps, always was, the most prevailing crime throughout the country. It is probably an evil necessarily attending the civil state of the ryots. I think it rather unfortunate than otherwise, that it should be less shocking to humanity than some foujdarry crimes. I know not how it is that extortioners appear to us in any other light than that of the worst and most pernicious species of robbers. It will be found, I believe, that the condition of husbandmen in eastern countries, is incompatible with security, and that sort of independence which enables men to maintain themselves against oppression and violence. The public revenues, which are in reality the rent of land, are, throughout the East, collected by a system of extortion, violence, and barbarity of every kind."

After alluding to the attempts, not without a partial success, which had been made by the Company's government, for the redress of that great class of evils, Sir Henry goes on to say, "The frequency, however, of the attachments and sales, under the Regulation of 1799, would alone serve to prove, that the revenues are not collected without extreme misery to the ryot." Two circumstances will be sufficient to show the unlimited oppression to which the ryots stand exposed. The first is, that the Zemindars are empowered to distrain, previous to a legal judgment, "without adducing," to use the language of Sir Henry, "any evidence of their claim before they proceed to enforce it, and acting as judges in their own cause." The second circumstance is, that "the ryots are almost totally deprived of the power of seeking redress, by the expense of the courts of law."[1] Knowing this, can any one be surprised, when Sir Henry Strachey declares, "The laws regarding attachments are greatly abused, and are productive of extreme oppression."

Some diminution in the outstanding balances, and some improvement in the sales of the estates of Zemindars, having become a subject of boast; it is to the regulation, which authorized the above-stated oppressions, that "this effect," says Sir Henry Strachey, "is chiefly to be ascribed. Yet," he adds, "as if the mode in which the rents are levied, and the condition of the ryots, were matters not necessary to be noticed, it is frequently pronounced at once, as a position admitting of no doubt, that these favourable sales afford a substantial proof of the lightness

[1] See, below, under the head of Justice, p. 540, 541.

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of the assessment, and of the flourishing state of the country."[1]

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The important subject of judicature, or the effects of the regulations contrived for the dispensation of justice, next call for our attention.

The Committee of the House of Commons remark,

[1] Nothing is more remarkable than the propensity of all sorts of persons connected with the Indian government, to infer from any thing, or every thing, "the flourishing state of the country." Here is one instance of the curious premises from which the inference is apt to be drawn. The man who explores, with any degree of attention, the documents of Indian history, will be at no loss for others. Another is adduced by Sir Henry Strachey, on the same occasion, and its insufficiency pointed out. "To those who are tolerably well acquainted with the internal state of the country, it is known," says he, "that the population, unless checked by some great calamity, constantly increases very fast. Increasing cultivation necessarily follows population. The want of courts of justice, of a regular system of police, prevents not the prosperity of the provinces subject to the Mahrattas. Where no battles are fought, where the ryots remain unmolested by military exactions, where the Zemindar or his agent are seldom changed, the lands of the Mahrattas, in the neighbourhood of this district (Midnapore) are in a high state of cultivation, and the population is equal, frequently superior to ours. From the circumstance of increasing population alone, we cannot, as many pretend, draw an inference of very high prosperity and good government." In fact, where marriage at the earliest marriageable age is a religious duty of the strongest obligation, and to die without having a son, the greatest of misfortunes, nothing but extreme misery can prevent the rapid increase of population; and when a vast quantity of good land still remains to be cultivated, nothing can be the cause of such misery but bad government. "To imagine," continues the same enlightened observer, "that the population has increased, solely in consequence of our system of internal administration, appears to me most erroneous. Under the native government, the population had reached its utmost height, or very near it. Thirty years ago, nearly half the people were swept away, by the greatest famine recorded in history. Ever since that period, except in 1790, when a partial famine happened, the numbers have been gradually increasing. I do not know that the increase has been more rapid, during the last ten years, than during the twenty preceding; although most of the abuses of the native governments, and many new abuses of our government, prevailed throughout the greater part of the last-mentioned period. Supposing the country to enjoy peace, I cannot easily conceive internal mismanagement so excessive, as to stop the increase of population." See for these, and the quotations in the text, Answer to Interrogatories in 1802, Fifth Report, ut supra, p. 530—532.

that so inadequate was the provision for judicature to a population of 27,000,000,[1] when the collectors alone were the judges, that the people, among themselves, must have settled the greater number of their disputes, "by modes peculiar to their tribes or castes, or by reference to their *gooroos*, or spiritual guides;" that it was the object, on the other hand, of Lord Cornwallis, to afford the means of a regular judicial decision, in every case, to every inhabitant of the country, "without any impediment from the distance the complainant would have to travel for redress;" an object so essential undoubtedly to goodness of government, that it is the principal end of its institution.

It soon appeared, however, that the provision made for this important business was ill adapted to its end. The tedious forms through which the judges had to travel, permitted them to decide so small a number of causes in a given portion of time; and the delay and uncertainty which attended a technical and intricate mode of procedure, afforded

[1] The Committee complain that they still remain in the dark respecting this important article of knowledge; and that the estimates formed by the best informed of the Company's servants, betrayed, by their discrepancy, ignorance so profound of the field of inquiry. The first estimate, upon the acquisition of the Dewannee, made the population of the three provinces, Bengal, Bahar, and Orissa, 10,000,000. By Sir William Jones it was computed to be 24,000,000. Mr. Colebrooke made it 30,000,000. The Committee take the medium between the conjectures of Jones and Colebrooke, and call it 27,000,000. Report, ut supra, p. 62.—M. The Committee allude to the returns called for by Lord Wellesley, in 1801, although they attach no credit to the results. From a comparison with other inquiries, since made, they appear to have erred chiefly in being under-rated. The population of Bengal and Bahar, according to Hamilton, is above thirty-six millions, and that of Benares three millions. The population of Orissa is estimated by Stirling at 1,296,000 exclusive of the hill tribes, whose numbers could not be ascertained.—W.

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so much encouragement to dishonest litigation, that the pace of decision fell prodigiously behind that of the multiplication of suits; and the path of justice might, in some places, be regarded as completely blocked up.

A more melancholy exhibition of the weakness of the human mind, arising from the wretched nurture which it still receives, cannot easily be discovered or conceived, than that which appears in the proceeding we are next to relate.

To obviate the disproportion which was found to exist between the number of judicial decisions and the occasions for them, two rational expedients presented themselves. One was to disencumber the Courts of every operation not essential to the ends of justice; by which means they might have been enabled to get through with a much greater number of causes. If, even by the most expeditious mode of procedure, the Courts were unable to decide as many causes as were brought to them, the case was plain; the number of courts was too small for the business of the country, and, wheresoever necessary, ought to have been increased.

This was not the course pursued by the Anglo-Indian government. No. To ease the pressure upon the Courts, they enacted, that every man who applied for justice should be punished; literally punished; as if the application for justice were a crime; in hopes that many persons, if they were punished on account of their applying for justice, would cease to apply. Government enacted, that every applicant for justice should be fined; that is, should be compelled to pay a sum of money upon

the institution of a suit; and various other sums during the progress of it, by the imposition of taxes upon the proceedings: all for the declared purpose, the sole purpose, of driving people away from the Courts. Such was the scheme for the better administration of justice which was devised by British legislators in the year 1795; such the scheme, the existence of which they still approve; and finally, such is the scheme which obtained the applause of a Select Committee of the British House of Commons in the year 1810.[1]

Nothing is more easy than to lessen the business of the Courts of law: to diminish it to any proposed extent; to produce its annihilation. What are the means? The most obvious in the world; denial of justice. Decree that no person whatsoever who is less than six feet high, shall be admitted to sue in a court of justice; and you will reduce the business to a very manageable quantity: decree that no man who is less than eight; and you reduce it to nothing. A man's stature is surely as good a test to judge by, whether he has received an injury, as his purse.

The delusion is so gross, which in this case produces its effects upon the minds of the deluded, that the contemplator is astonished at finding men who are subject to its influence still occupying, and that almost exclusively, the seats of power.

Of the two parties to a suit it is not of absolute necessity that either should be dishonest: because the case may have in it such obscurity as to require the decision of a judge. But these cases are, or at

[1] Fifth Report, p. 63.

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any rate, if there was a good code of laws, would be, very rare. In by far the greater proportion of cases, when law-suits are numerous, one of the parties is intentionally dishonest, and wishes to keep or to gain some unjust advantage.

When legislators, therefore, propose to drive people from the Courts of Justice by expense, they must of necessity imagine that it is the dishonest parties only whom the expense will deter; for it would be dreadful to make laws to prevent the honest from receiving a legal protection. But is it easy for the wit of man to frame a proposition stamped with stronger characters of ignorance or corruption than this? That to render access to justice difficult is the way to lessen the number of crimes. What is the greatest encouragement to injustice? Is it not every thing which tends to prevent immediate redress. What is the greatest discouragement to injustice? Every thing which tends to ensure immediate redress. But tedious and expensive forms of law, of which uncertainty is a consequence, have the greatest tendency to prevent immediate redress. They are, therefore, a great encouragement, not a hindrance to injustice.

Let us contemplate the motives which actuate the two parties to a civil suit, the just, and the unjust. The unjust man is actuated by the desire, wrongfully to retain, or wrongfully to obtain, possession of an article of property. The just party is actuated by the desire, rightfully to obtain, or rightfully to retain, the same possession. What is the evil, the hazard of which the unjust man incurs? The costs of suit. What is the good the chance of which he obtains?

The whole of the property forming the subject of dispute. It is evident, that a very slender chance in the latter case may outvalue all that is risked in the former. It is evident, that, considering the great propensity of mankind, particularly of the dishonest part, to over-value their own chances of good fortune, the risk of the costs will in many instances be run, where the chance of success is exceedingly small. In the case of sums of any considerable amount, the advantage of retaining the property, even during the long period which under an intricate form of procedure is required to arrive at the execution of a decree, may be more than a compensation for all the expense which it is necessary to incur.

Even in those cases in which the expense bears a great proportion to the value of the matter in dispute; those cases in which the value of the property is moderate; what are the motives by which the honest and dishonest litigant are liable to be impelled? On the side of injustice there is, first, the certain advantage of delay, and there is, secondly, the chance of success. On the side of justice there is only the chance of success.

Suppose then chances of success to be equal; the motives to incur the expense of a law-suit would in that case be always greatest on the side of the dishonest litigant; none, therefore, but the injured is in that case liable to be deterred from law-suits by fines upon the application for justice.

As it is evident that, in proportion to the chance which injustice has for success in the Courts of Justice, the greater is the motive which the unjust man has not to be deterred, and the just man has to

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be deterred by the expense; so it is also evident that this is not all: it is evident, that the motive of the unjust litigant is not proportioned to the real chance which he has for a decision favourable to his injustice; but that it rises to the pitch of his own exaggerated estimate of his chance of success. Now, in all systems of procedure, which by technical forms render the judicial business complex, intricate, full of subtleties and snares, the chance of success to injustice, in a vast proportion of cases, is very great. This chance, most assuredly, is the producing cause of a great proportion of lawsuits. This, together with the advantages of delay, derived from the same system of forms, is, where the corruption of the judge is not contemplated, accountable for all suits at law, except that comparatively small number, in which the right of the honest man is really a matter of obscurity and doubt. In all cases, therefore, in which the unjust man estimates this chance at more than the expense of a suit, it is not the man who injures, but the man who is injured, whom the fine upon justice operates to deter. In all such cases the fine upon the application for justice has no other effect than to compel the honest man to submit to iniquity; no other effect than that of affording a province to injustice, in which it may range at will.[1]

[1] In India the actual state of the facts is asserted, upon the experience of Sir Henry Strachey, one of the most respectable of the Indian judges, and an honour to the judicial character, to be this; That "out of 100 suits, perhaps in five at the utmost," the plaint of the prosecutor is unfounded. In ninety-five then, out of every 100 cases, the plaintiff has a right to a decision. In all that vast proportion of cases, with the small exception of those in which the point of justice may be doubtful, the

In all cases then, in which this expedient does not deter the unjust litigant, it is mischievous beyond expression. The cases in which it can deter the unjust litigant must always be few; because it is evident, that the motive, under the present state of the law, is very great to unjust litigation, and that the counter motive, arising from a certain addition to the expenses of suit, is in comparison small. If it be considered, that all litigation is caused by the motive to injustice, unless in the comparatively small number of cases in which the point of right is really doubtful, it must be regarded as a motive very powerful, since it governs the conduct of so great a number of men. If it be considered that the only force employed, by the new expedient of the Indian government, to counteract this motive, is a certain difference of expense, it will not be regarded as possessing much efficacy to deter from litigation the man who expects from it an unjust advantage.

Thus stands the case with regard to the class of suitors who can endure the oppression of a law-suit, rendered expensive by legislative design. There is, however, a different class of persons; a class of persons including the whole population, with the deduction of a small proportion; and how stands the case with regard to them? They are utterly unable to defray the expense of a law-suit, rendered costly and oppressive by legislative design. They are, by consequence, excluded from the Courts of Justice. A barrier, altogether insurmountable, is set up between

defendant is an injurer; and every thing which has a tendency to prevent the law-suit, has a tendency to defraud the innocent, reward the guilty. Answer to Interrogatories, Fifth Report, ut supra, p. 526.

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them and the services of the judge. Except in the cases affecting the public peace, and calling for public prosecution, justice is denied them: They are placed out of the protection of law. In this, the most large, and, by its largeness, the most interesting and important, of all the portions of the demand for justice, the man who intends injustice clearly sees, that he may perpetrate his purpose in absolute safety. The poor man is debarred from even the application for redress. It must be confessed, then, that in this large department of the field of justice, law-suits are prevented by expense; effectually prevented, by rendering plunder and oppression, without remedy, the lot of the innocent, and holding out the premium of perfect impunity to injustice.

A provision, indeed, was made for persons suing in the character of poor. But to how little effect that provision exists any where, no words are necessary to make known.

A mode of procedure, inartificial, expeditious, and cheap, before native commissioners, provided for suits on account of small sums, though much more useful, was extremely inadequate to the extent of the demand.[1]

[1] "The expense and delay," says Sir Henry Strachey, "to which ryots are subject in prosecuting their suits are, to my knowledge, excessive. For the truth of this, I would refer to the records of any Registrar in Bengal. The duty of deciding revenue causes, for a small amount, under the operation of the present regulations, has fallen chiefly on the Registrars. The rights of the inferior ryots are seldom discussed in the superior courts. The welfare of those from whom all revenue, and even subsistence, must be derived—who are the poorest, the weakest, and most numerous—is a matter of importance; and not unworthy of the notice of government. I have therefore thought it my duty to dwell on this subject with some minuteness. It must, I am sure, constantly happen, that a ryot gives up his prosecution in despair, on finding his

The expedient, for proportioning the number of law-suits to the powers of the courts of justice, by

power of continuing it beyond his power to sustain!—Exaction of revenue is peculiarly difficult of proof. Either no engagements exist, and no accounts can be found; or they are extremely defective and perplexing. It is not the original fee, on the institution of the suit; but the subsequent charges, on exhibits, and on witnesses, that appear to me intolerable. I have often seen a suitor, when stripped of his last rupee, and called upon for the fee on a document, produce in court a silver ring or other trinket, and beg that it might be received as a pledge; and after all, perhaps, he was cast for want of money to bring proof." On the subject of delay, this Judge observes; "The cultivators are unable to support themselves at the Sudder, during a procedure of two or three months. They cannot return to their houses without submitting to their oppressor. They must have speedy justice, or none."

The pretended relief afforded by the power of suing in *formâ pauperis*, he shows, is more burdensome than paying the fees. The number too of the persons who sue in this form suggests important reflections. "Half the complainants, in the Dewanny Adaulut of this Zillah, appear as paupers, although these find much difficulty in complying with the regulation intended for the relief of paupers. No man can be admitted to prosecute as a pauper, till he brings two witnesses to attest his poverty, and two securities for his personal appearance; and no one can well do this without, at least, maintaining himself and them, during their absence from home. But the expense of such maintenance must exceed that of the fees and stamp-paper."

On the pretext of checking litigiousness by expense; he asserts, that there are *no litigious plaintiffs*, or at most very few, and that law-suits are almost always produced by the dishonesty of the defendant. Checking litigiousness, then, by expense, is merely fining a plaintiff for seeking justice; compelling the honest man to remain a prey to the cheat. In some few prosecutions, the dishonest intention is on the side of the plaintiff, when false demands are supported by false evidence. But he asserts, that the proportion of false and frivolous demands, both taken together, amount not to five in a hundred of those which are just and substantial. Contrary to the usual prejudice, he affirms, "The complaints of these people are seldom or never litigious, brought forward merely from the quarrelsome disposition of the prosecutor."

If suits, he said, were prevented, by increasing the expense, all that could be inferred was, that few could afford to pay: "but a man is disabled from sustaining expense, in proportion as he is poor, and not in proportion as he is litigious."

The notions of this Indian Judge, on the subject of judicature, were very different from those of the governing men in India and in England. "It is my opinion," said he, "that the nearer we approach to the rule

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rendering justice more oppressive than injustice; irrational as it was in principle, and atrocious in practice, failed in another respect. It produced not the effect for which it was intended. In spite of all the exertions which could be made, and in spite of repeated augmentations of law expenses, the number of causes remaining undecided, in 1801, was so great as to excite the attention of the Court of Directors; who pointed it out to their government in India, as an evil calling loudly for redress. In 1803, on "the almost incredible number of causes undecided," they

of granting to all speedy justice, without any expense whatever, the nearer we shall, in our judicial system, approach perfection. It will not, I imagine, be denied, that it is desirable, the least tedious, and least expensive mode of obtaining redress, should be open, where an injury has really been suffered. When a poor man has been oppressed, he should be freed from trouble and expense, and assisted and encouraged, as far as possible, in prosecuting his complaint. He is not, in such a situation, a fair object for taxation. It does not become the ruling power to add to his misfortune by levying impositions upon him. It is clear that a ryot, from whom undue rent has been exacted, must feel the charge of stamp and fees to be a severe aggravation of his distress." What is the consequence? That which must of necessity follow—that which might be expected to call forth all the attention of Englishmen—but which to this late period appears to have called forth none: "That the ryots, though now more independent (not from oppression) are much worse protected from distress than heretofore" For these quotations from Sir Henry Strachey, see the Fifth Report, ut supra, p. 525 to 532.

Sir Henry Strachey is not the only one of the Judges in India from whom a British parliament and British rulers, both in London and Calcutta, might receive important lessons. The report from the Judges of the Court of Circuit and Appeal at Moorshedabad, consisting of Mr. Colebrooke, Mr. Pattle, and Mr. Rocke, in 1802, says, "The increased expense of law-suits has never been found to check litigiousness. On the contrary, it has been generally observed, that litigiousness is encouraged thereby, in the hope that the certainty of the expense, added to the uncertainty of the result, might deter parties from defending even just rights. On comparing the half-yearly reports of the several adauluts in this division, it does not appear that the number of suits, filed since the establishment of the fees and stamp duties, differs much from the number filed, in a similar period, previous thereto." Fifth Report, p. 519.

remark, that, "to judge by analogy of the courts in Europe, they would be induced to think so great an arrear could scarcely ever come to a hearing. In the year 1802, the government resolved on instituting, where necessary, the office of an assistant Judge; on extending the jurisdiction of the native commissioners; and on allowing a more expeditious mode of procedure in sums of a small amount. "Subsequent reports," say the Select Committee of the House of Commons, "are not calculated to show that the difficulty of keeping down the number of cases, depending on the file, has at all diminished; or that the means resorted to for that purpose, have been as successful as was expected." And they quote a despatch, of a date so late as March, 1812, in which the Directors express themselves in the following extraordinary terms. "We should be very sorry, that, from the accumulation of such arrears, there should ever be room to raise a question, whether it were better to leave the natives to their own arbitrary and precipitate tribunals, than to harass their feelings and injure their property, by an endless procrastination of their suits, under the pretence of more deliberate justice."[1]

Of the extent to which they are harassed, and the evils which so defective a system of judicature produces, some conception may be attained by the following quotation from a report of one of the Judges of circuit. "The commitments for breaches of the peace, arising from boundary disputes, and other contests concerning landed property, are ascribed to the

[1] See for the above quotations, the Fifth Report, ut supra, p. 63, 64.

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great, though unavoidable arrear, of untried causes pending in some of the courts: since by necessarily protracting, for years, the decision of suits, it frequently drove the suitors to despair; and induced them to run the risk of taking justice into their own hands, by seizing the object in dispute, rather than to await the tardy issue of a process, which threatened to exceed the probable duration of their own lives."[1]

The Court of Directors appear, in that despatch of theirs which has been recently quoted, to imagine, that the choice lies exclusively between the present institution, of which the evils are so enormous, and the arbitrary and precipitate system of the natives. A slight degree of reflection, exempt from the shackles tied upon their minds by custom and authority, would point out to them another course, infinitely preferable to both. Let them give to the people distinct definitions of their rights in an accurate code, and give them courts of justice, which will decide not precipitately, but carefully; free, however, from technical impediments, and therefore quickly: and they will both enable their courts to investigate a greater number of causes; and will exceedingly reduce the number of suits.

It is the admirable effect of an excellent administration of justice, that it prevents the very intention to commit injury, by making it certain to every one that injustice will be disappointed of its aim. Who would go into court for a decision, aware that his cause was bad, if he knew that its merits would be accurately explored, and justice immediately

[1] See for the above quotations, the Fifth Report, ut supra, p. 65.

awarded? In this case the minutest portion of benefit could not be expected from iniquitous litigation. Iniquitous litigation, therefore, would cease. And after the deduction of suits instituted or provoked for purposes of injustice, very few in comparison would remain. But the case is altogether different, when a man knows that it will be months, or perhaps years, before his injustice will come in turn for investigation; that even then, it is only ceremonies that are to be performed, for a considerable space of time, while the merits of the question remain unexplored; that the law is unwritten, arbitrary and obscure; that the procedure is exceedingly difficult to follow without mistakes; and that on these mistakes, totally regardless of the merits of the question, the decision may finally depend. The advantages of injustice, in a state of things like this, are so very numerous, and the encouragement to unjust litigation so very great, that the multiplication of suits may be regarded as a natural and unavoidable result.

No proposition, derived from political experience, may be relied on more confidently than this. That the multiplication of law-suits is a proof of the bad administration of justice: that a perfect administration of justice would almost annihilate litigation: and that the attempt to reduce it by any other means, such as that of expense, is to hold out encouragement to plunderers, and to deny protection of law to the honest and just.

When any great public duty is to be performed, and the number of performers is found to be too small for the demand, the most obvious of all expedients is to increase the number. With regard to

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this expedient for enabling the government in India to do justice between its subjects, the Committee of the House of Commons made an extraordinary declaration in the year 1812. "An augmentation of the number of European Judges, adequate to the purpose required, would be attended with an augmentation of charge, which the state of the finances is not calculated to bear; and the same objection occurs to the appointment of assistant Judges."[1] Never, since man had the use of language, was a more terrible condemnation of any government pronounced. Of all the duties of government, that of maintaining justice among the people is the foremost. This, in fact, is the *end* for which it exists. Here is said to be a government, which raises upon the people a revenue so vast, that, by avowed intention, it is literally all that they can bear; that is, oppressive to the highest pitch which oppression can reach without desolating the country; And all this revenue is squandered away, till not a sufficiency remains to hire Judges for the distribution of justice![2]

[1] Fifth Report, p. 65.

[2] The evil arises, in a great measure, out of the anomalous constitution of the government. Foreign judges can neither be so numerous or so cheap as native judges. Unfortunately the latter are not equally effective—they may become so, and it is undoubtedly the duty of the government to promote their efficiency, and thus remedy the great want, the disproportion between the Courts of Justice and the population. The measure has been adopted, of late years, of employing natives in the administration of the civil law to a much greater extent, and on a more liberal scale than formerly. The result has been beneficial, although to what extent is not yet determined. Even before the policy was formally introduced, some steps towards its fulfilment had been made, particularly at Madras; and some of the consequences are thus described by a competent authority. "The experience acquired at Madras, where native agency has been largely resorted to for more than twelve years in judicial duties, does not

What is made of all this money? To what preferable purpose is it applied? High matter, in large quantity, would be contained in a proper answer to these questions.

Having surveyed the effects which practice and experience have made visible, to those that least enjoy the powers of reflection, of the Regulations made for decision upon the civil rights of the people of India; we come, in order, to the effects which have been produced by the Regulations made for the suppression of crimes, including both penal judicature and police.

In two ways, a system of legislative provisions for the suppression of delinquency may be defective. The burdens which it imposes, in the way of expense, and in the way of infliction, may be too heavy. It may not answer its end; instead of completely repressing offences, allowing them continually to increase.

In regard to burdens, under the reforms which we are now contemplating expense was increased. The inflictions, according to the ideas of Englishmen, were mitigated; but the banishments, substituted to the mutilations, seem to be regarded with still greater horror by the natives than the mutilations themselves. It is unnecessary to dwell upon this topic. The most important point for contemplation is, the diminution or increase of the security

justify the apprehension that natives are liable to prove corrupt judges. During that period they have decided, on an average, upwards of 60,000 suits in the year, to the general and growing satisfaction both of the people and of their official superiors. Minute of D. Hill, Esq. on Judicial and Revenue Administration. March, 1830. App. to the Report of the Select Committee. August, 1832, p. 179.—W.

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of the people by the increase or diminution of crimes. In this respect, too, the effects of the English Regulations have been deplorable.

Of all the crimes by which the private members of the same community infest one another, robbery, in the idea of which are included plunder and murder, is the most deeply fraught with mischief, both by the evil brought upon the immediate victims; and by the alarming sense of insecurity which the prevalence of that crime strikes into the mind of almost every individual in the community. This, the highest of all crimes, assumes an aspect peculiarly terrible in India; where the robbers (in the language of the country *decoits)* form themselves into confederacies, and perform their crimes with a combination of forces which it is not easy to resist. This class of offences did not diminish under the English government, and its legislative provisions. It increased; to a degree, highly disgraceful to the legislation of a civilized people. It increased under the English government, not only to a degree, of which there seems to have been no example under the native governments of India, but to a degree surpassing what was ever witnessed in any country in which law and government could with any degree of propriety be said to exist.

The testimony of the judges, and other officers of the Company's government, shall be adduced, as much as possible, in their own words. "The crime of decoity" (that is robbery by gangs), says Sir Henry Strachey, in his report as judge of circuit in the district of Calcutta in the year 1802, "has, I believe, increased greatly, since the British adminis-

tration of justice. The number of convicts confined at the six stations of this division (independent of Zillah twenty-four pergunnahs) is about 4000. Of them probably nine-tenths are decoits. Besides these, some hundreds have of late years been transported. The number of persons convicted of decoity, however great it may appear, is certainly small, in proportion to those who are guilty of the crime. At Midnapore, I find, by the reports of the police darogas, that, in the year 1802, a period of peace and tranquillity, they sent intelligence of no less than ninety-three robberies, most of them, as usual, committed by large gangs. With respect to fifty-one of these robberies, not a man was taken; and for the remaining forty-two very few, frequently only one or two in each gang. It must not be supposed that decoity prevails in the district of Midnapore to a greater extent than in other districts of this division; on the contrary, I think there is less, except perhaps in Beerbhoom. In Burdwan there is certainly three or four times as much."[1]

The judge of circuit in the Rajeshahye division in 1808, in a letter to the Registrar to the Nizamut Adaulut, says, "It is with much diffidence I address the Nizamut Adaulut on the present occasion; for I have to propose measures, the nature of which they are, I know, generally averse to. I do not wait till the end of the circuit, when, in the course of official routine, I should have to make a report to the court; because the evil which I complain of is great, and increasing; and every instant of delay serves

[1] Fifth Report, p. 559.

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only to furnish new victims to the atrocities which are daily committed.—That decoity is very prevalent in Rajeshahye has been often stated. But if its vast extent were known: if the scenes of horror, the murders, the burnings, the excessive cruelties, which are continually perpetrated here, were properly represented to government, I am confident that some measures would be adopted, to remedy the evil. Certainly there is not an individual, belonging to the government, who does not anxiously wish to save the people from robbery and massacre. Yet the situation of the people is not sufficiently attended to. It cannot be denied, that, in point of fact, there is no protection for persons or property. Such is the state of things which prevails in most of the Zillahs in Bengal. But in this it is much worse than in any other I have seen. I am fully persuaded, that no civilized country ever had so bad a police, as that which Rajeshahye has at present."[1]

Mr. Dowdeswell, the secretary to government, in a report which he drew up, in 1809, "On the general state of the police of Bengal," says; "'Were I to enumerate only a thousandth part of the atrocities of the decoits, and of the consequent sufferings of the people; and were I to soften that recital in every mode which language would permit, I should still despair of obtaining credit, solely on my own authority, for the accuracy of the narrative." He goes on to state, that, "Robbery, rape, and even murder itself, are not the worst figures, in this horrid and disgusting picture. An expedient of

[1] Fifth Report, p. 586.

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common occurrence with the decoits, merely to induce a confession of property, supposed to be concealed, is, to burn the proprietor with straw or torches, until he discloses the property, or perishes in the flames. And when they are actuated by a spirit of revenge against individuals, worse cruelties, if worse can be, are perpetrated by those remorseless criminals. If the information obtained is not extremely erroneous, the offender, hereafter noticed, himself committed fifteen murders in nineteen days: And volumes might be filled with the atrocities of the decoits, every line of which would make the blood run cold with horror."[1]

Mr. Dowdeswell inserts an abstract of three trials which had been recently adjudged in the court of Nizamut Adaulut. It is highly proper that one should appear as a specimen. The prisoners, nine in number, were charged with being the principal actors in a gang of robbers, who on the night of the 27th August, 1808, perpetrated the enormities which the prosecutor related, as follows: "That about twelve o'clock on the night on which the robbery and murders took place, he was sleeping in a house at a short distance from that of his father, and being awoke by the noise of robbers, went out, and saw that a party of about fifty decoits had attacked his father's house; that, from fear, he concealed himself in a plantain garden, within fifty yards of the spot, from whence he saw the robbers drag out from the house his father and mother; and, after binding their hands and feet, apply lighted straw and torches

[1] Fifth Report, p. 603.

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to their bodies, demanding of them, at the same time, to point out where their money was concealed; that the unfortunate people assured them, they had none; but that the robbers, proving inexorable, went into the house and brought from it a quantity of hemp, which they twisted round the body of Loharam, and, after pouring on it ghee, or clarified butter, to render it more inflammable, set fire to it:—That they then procured a quilt from the house, which they also moistened with ghee and rolled round the body of Loharam:—That the prisoners Balka Sirdar, Nubboo Sirdar, and Kunkye Cupally, at the direction of the prisoner Bulram Sirdar, threw the prosecutor's father on the ground, and keeping him down, with a bamboo which they held over his breast, set fire to the quilt:—That at this time the cries of the unfortunate man were most shocking, the robbers continually calling on him to tell where his money was, and he assuring them that he had none, and imploring them to take his cows, or any thing they might find in his house:—That the robbers, however, still proceeded to further cruelty, having procured some mustard-seed, and torn up the flesh of Loharam's breast, by drawing a large bamboo several times across it, pounded the mustard-seed on the sores, with a view to make the torment more excruciating:—That, at the same time, the mother of the prosecutor was tortured nearly in the same manner, by the robbers tying hemp round her body, and setting fire to it, and dragging her about from place to place, by the hair of her head, calling on her all the while, to tell them where her husband's money was concealed; and also calling out

on the prosecutor by name, to come and witness the state of his father and mother:—That these cruelties, together with the plunder of the house of Loharam and other ones adjacent, continued until between three and four o'clock in the morning, at which time the robbers departed; and that the prosecutor, on going up to his father and mother, found them most dreadfully mangled, but still alive; that his father expired about noon, and his mother, not till the following morning. The prisoners whom the prosecutor swore to have recognised, at the murder of his parents, in addition to Bulram Sirdar, Balka Sirdar, Nubboo Sirdar, and Kunkye Cupally, before mentioned, were;—Dacooa Sirdar, Shookoor Peada, Mudary Peada, Kallichurn Ghose, and Nubboo Sirdar; and he also specified Casinauth Bagdy, and Gudda Barooge."

"Several witnesses on the part of the prosecution (inhabitants of the village) confirmed the circumstances related by the prosecutor.

"The court in consequence, sentenced the prisoners convicted, nine in number, to suffer death."[1]

The other two cases are of a similar character. One of them relates to the robbery of an English gentleman whose house was plundered, who was himself loaded with indignity, and some of his servants murdered. "An accurate judgment," says the secretary of the Indian government, "of the nature of the evils in question, may be formed from the foregoing documents."

Of the extent of the mischief, this gentleman,

[1] Fifth Report, p. 606.

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however, informs us, that the government had no very accurate knowledge. We are left to judge of it, by the general declarations we receive respecting its prevalency, and respecting the state of alarm in which the people are universally held. From one declaration, to which there is no dissent, we may draw an estimate, beyond which no imaginable evil can easily be found. "To the people of India there is no protection, either of persons or of property."

It is impossible to suppose that the worst of all crimes should grow up to a height of unexampled atrocity, singly, and by itself. That state of things which affords encouragement to one species of delinquency, is pretty sure to afford encouragement to other species of delinquency. The case of India confirms the general experience. Beside decoity, which involves a combination of the most dreadful crimes, "burglaries, effected by breaking through the walls of houses; murder from various motives; robberies attended with murder and manslaughter; perjury, and subornation of perjury, practised for the most atrocious purposes; are," say the Select Committee, "not unfrequent in many parts of the country; but the Bengal provinces appear to be, more than any other, characterized by them."[1]

Sir Henry Strachey says, "Since the year 1793, crimes of all kinds are increased; and I think most crimes are still increasing. The present increase of crimes may, perhaps, be doubtful; but no one, I think, can deny, that immediately after 1793,

[1] Fifth Report, p. 66.

during five or six years, it was most manifest and rapid; and that no considerable diminution has taken place."[1]

The Judge of circuit in the Bareilly division, in 1805, warns the government against supposing that the lists transmitted from the courts exhibit an accurate view of the state of delinquency; because the cases are extremely numerous which are never brought before the magistrates, from the negligence or connivance of the police officers, and the aversion of the people to draw upon themselves the burden of a prosecution. Hence it happens that the less aggravated cases of robbery, with those of theft and fraud, "are frequently perpetrated, and no records of them remain." Hence the cases of homicide, which least admit of concealment, occupy the largest space in the criminal calendar. "The number of persons," continues the Judge, "convicted of wilful murder is certainly great.—The murder of children, for the sake of their ornaments, is, I am sorry to say, common. So much so, that I submit whether it might not be advisable to strike at the root of the evil, by taking away, if possible, the temptation to commit the act: I mean, adopting measures to prevent children from wearing gold and silver ornaments. For my own part, being convinced that, under the existing laws, we have no other means of putting an end to the frequent perpetration of this crime, I could wish to see the practice of adorning children with valuable trinkets, altogether prohibited." He adds, "A want of tenderness and

[1] Answer to Interrogatories, Fifth Report, p. 533.

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1793. In Sir Henry Strachey's paper of answers to interrogatories, from which we have derived so much important information, he says, "Perjury has increased greatly; and is increasing."[2] In the report of the circuit Judge of the Patna division in 1802, it is stated, that "of the murders charged (at his late jail delivery) only a few, and of the robberies no more than one, really happened. The rest are merely fictitious crimes, brought forward to harass an opposing litigant, or revenge a quarrel. The criminal court is the weapon of revenge, to which the natives of this province resort, on all occasions. Men of the first rank in society feel no compunction at mutually accusing each other of the most heinous offences, and supporting the prosecution with the most barefaced perjuries. Nor does the detection of their falsehood create a blush."[3]

Such a prevalence of the higher crimes implies a complete dissolution of morals. To this also, if it could remain doubtful, the same weight of testimonial evidence is applied. Sir Henry Strachey says, "The people are probably somewhat more licentious than formerly. Chicanery, subornation, fraud, and perjury, are certainly more common. Drunkenness, prostitution, indecorum, profligacy of manners, must increase, under a system, which, although it professes to administer the Mohammedan law, does not punish those immoralities."

In having lessened the quantity of direct oppres-

[1] Fifth Report, p. 565, 566. [2] Ib. p. 541. [3] Ib. p. 68.

sion which superiors exercised, as a sort of right, over inferiors, consisted, in the opinion of this judge, the whole of the benefit introduced by the English laws. And this, again, he thought, was counterbalanced by the loss of that protection which the superior was accustomed to yield to his dependants: and by exposure to the still more dreadful scourge of decoits, and other depredators and destroyers.[1]

The Judge and magistrate of Burdwan, in his answer to interrogatories in 1802, says, I am sorry that of the moral character of the inhabitants, I cannot report favourably; or give it, as my opinion, that the British system has tended to improve either the Mohammedan or Hindu moral character. Certain it is, that much profligacy, vice, and depravity, are to be found amongst the higher class: and the crimes, committed by the lower, will, I think, be found more prevailing, and in greater number, than under the Mohammedan jurisprudence."[2]

The magistrates of the twenty-four pergunnahs, on the same occasion, say, "We are sorry that we cannot make any favourable report respecting the moral character of the inhabitants of the districts subject to our jurisdiction. The lower classes are in general profligate, and depraved. The moral duties are little attended to by the higher ones. The system, introduced by the British government, for the administration of the law, and for the conduct of the internal administration of the country, does not, therefore, appear to have improved the moral cha-

[1] Fifth Report, p. 527. [2] Ib. p. 546.

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racter of its inhabitants. The use of spirituous liquors, debauchery, and numberless other vices, which formerly met with the severest checks and punishments, are now practised, with impunity, amongst all classes."[1]

Of this hideous state of society, the causes are now to be explored. That the root was laid in the corruptive operation of the despotism to which in all ages the people had been subject, admits of no dispute, and stands in need of no explanation. The important inquiry to which we are summoned is; why the British regulations, intended for the abatement of delinquency, had been so unfortunate as to increase rather than diminish it.

That penal law in the hands of the English has failed so completely of answering its end, is to be ascribed in a great degree to the infirmities and vices of the law itself. The qualities wherein consist the virtues of a system of law appear to have been little understood in time past by British legislators. Clearness, certainty, promptitude, cheapness, with penalties nicely adapted to the circumstances of each species of delinquency; these are the qualities on which the efficacy of a system of penal law depends; and in all these, without one exception, the penal law set up by the English in India is defective to a degree that never was surpassed, and very rarely has been equalled. Its failure, therefore, and the misery of the people who must depend upon it for protection, are not a subject for surprise.

[1] Fifth Report, p. 551.

It is a sort of a mixture of the Mohammedan and English systems, and so contrived as to combine the principal vices of both. With the exception of a change in certain modes of punishment, revolting to English minds, the Mohammedan code, which in penal matters had been exclusively followed by the Mogul government, was still retained. It was the characteristic of the Mohammedan law, as it is of the law of all rude nations, to be unwritten. The standard was the Koran, in which nothing beyond a few vague precepts could be found. To this were added the commentaries of the doctors, of which some had attained the rank of authorities. The vagueness of the commentaries corresponded with the vagueness of the original; and no distinct legislative definition existed. On every occasion, therefore, requiring a decision, the expounder of the law was called upon, for what? Not to point out a passage of the code exclusively containing the appropriate point of law. No such passage existed. What he did, or pretended to do, was, from a general view of what had been taught or decided by preceding doctors, to frame an inference for the particular case of the moment. His business was, not simply to declare, but to make the law, to make a separate law for an individual case, every time that a decision was required; to make it, and under no other restriction than that of some obligation to make the result bear some resemblance to former practice. In a law existing in this barbarous state, in which there was so little of any thing fixed or certain, a wide field was commonly assigned to the arbitrary will of the judge. All uncertainties in the law operate to the

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encouragement of crime; because the criminal interprets them, and with an estimate far beyond their value, in his own favour.

With a law of this description to administer, a procedure resembling that of the regular halls or rather closets of judicature in England was adopted for its administration. The English form of practice, or course of procedure, consists of so many operations and ceremonies, to which, however frivolous, or obstructive to the course of justice, the most minute obedience is rigidly enacted, that the administration of English law abounds with delay, is loaded with expense, and paralyzed by uncertainty. From only one of the vices of the Mohammedan system, the corruption of the judges, were the people of India now delivered; but they were visited with another, which appears to be to them a much more dreadful calamity, a complicated, tedious, expensive course of procedure, which to a great degree annihilates all the advantages of law.

The evidence we have on this important subject, is the testimony of those of the Company's servants on whom the business of judicature devolves: some of whom, if we may judge by those of their reports which the public have been permitted to peruse, are to a singular degree qualified for that important trust.

In answer to the following interrogatory; "Are you of opinion that the Mohammedan criminal law, with the alterations of that law made by the British government, is administered with too much lenity, or too much severity; and what do you suppose to be the consequences produced by the operation of the

spirit, in which the criminal law is in your opinion administered;" "We are of opinion," said the judges of circuit of the Moorshedabad division in 1802, "that, from the discretionary mode in which the Mohammedan criminal law, with the alterations of that law made by the British government, is administered, the administration of it admits both of too much lenity, and too much severity; at any rate of too much uncertainty. An offence, which to one law officer may appear sufficiently punished by a month's imprisonment, shall from another law officer incur a sentence of three or more years. Even in the heinous crime of gang-robbery, our records will show sometimes a sentence of fourteen years' transportation, and sometimes a sentence of two years' confinement. The consequences which we suppose to be produced by the operation of this spirit in which the criminal law is in our opinion administered, are contempt of the law itself, and encouragement to offenders."[1]

By Sir Henry Strachey, in his report in the same year as judge and Magistrate of Midnapore, it is said, "I may here take the liberty to mention a few circumstances which have fallen under my observation, as operating to obstruct the conviction of delinquents under the present system. I think the delay which occurs between the apprehension and the trial is too great. The accused have time and opportunity to fabricate a defence; and very little money will procure false witnesses to support it. The extreme length and intricacy of trials render the full and complete investigation of every case impossible."[2]

[1] Fifth Report, ut supra, p. 524.

[2] Ibid. p. 534.

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The magistrates of the twenty-four pergunnahs, in 1802, reported; "The delay attending the administration of criminal justice, and the length of time that elapses before criminal prosecutions are brought to a conclusion, is one of the causes to which the frequent commission of crimes in general, and that of decoity in particular, may, we think, be in a great measure attributed. The trouble, loss of time, and expense, that attends a criminal prosecution on the present system, is in our opinion a serious evil, and not only induces many who have been robbed to put up with the loss they sustain, rather than apply to the police officers for redress, but prevents numbers from coming forward with informations that would be highly beneficial to the community, and would, we have no doubt, in numberless instances be preferred, were the administration of justice more prompt and speedy than at present. The consequence of delay is, that numbers of criminals of the most daring description, against whom, when committed for trial, there is the most full and complete evidence, escape, and are again let loose on society;" owing to the death, removal, loss of memory, or mendacity of the witnesses; a mendacity often purchased, often the fruit of intimidation.[1]

"I am by no means sure," says the Judge of the Calcutta Court of Circuit, the enlightened Sir Henry Strachey, in 1803, "of the necessity or propriety of increasing the severity of punishment. Before I can form a judgment of the efficacy of such remedies, I must be certain that the punishment reaches the

[1] Fifth Report, ut supra, p. 552, 554.

offenders; at present the punishment does not reach them; they elude conviction; they elude apprehension. We cannot say that men become decoits, because the punishments are too lenient; they become so, because their chance of escaping altogether is so good."[1]

The report, in 1805, of the Judge of circuit in the Bareilly division says, "Attendance on the court, whether as a prosecutor, or witness, is generally regarded as a heavy misfortune; to avoid which, many leave their homes, and submit to infinite inconvenience and vexation; and many more, I presume, pay handsomely to the Nazir or his people, for permission to keep out of the way. Hence crimes are perpetrated, and no records remain of them.—The delay, and expense, of prosecuting, are intolerable to the lower orders."[2]

A system of law, marked by so many infirmities, may, in a country like England, where crimes are easily suppressed, and where the sentiments and manners of the people accomplish more than the law, afford an appearance of efficacy, and get the credit of much of that order which it does not produce; but in a country like India, where crimes are difficult to repress, and where the law receives little aid from the sentiments and manners of the people, a far more perfect system is required.

A system of law, which would really afford the

[1] Fifth Report, p. 561. Sir Henry continues, "A robber even in Bengal is, I presume, a man of courage and enterprise; who, though he roughly estimates the risk he is to run by continuing his depredations on the public, is rather apt to under-rate that risk—small as in reality it is."

[2] Ibid. p. 565, 567.

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benefits of law to the Indian people, would confer upon them unspeakable benefits. It is perhaps the only great political blessing which they are as yet capable of receiving. But the arbitrary will of a master, which though it often cuts down the innocent with the guilty, yet prohibits all crimes but his own, is preferable to a mere mockery of law, which lays the innocent man at the mercy of every depredator.

Of the prevalence of crime in India, the first of the causes, therefore, is found, in the vices and defects of the law. The second may be traced to those of the police; by the imperfections of which, because more superficial, and obvious to ordinary eyes, the attention of the Company's servants, and of the Committee of the House of Commons, appears to have been more peculiarly engaged. The main purpose of a system of police, is to serve as an instrument to the courts of justice; providing that no offence shall be committed without the prompt subjection of the offender to the course of law. The English system appears to fail in accomplishing this important end, by two defects. In the first place, the instruments are too feeble. In the next place, they are ill adapted to the end.

"The establishment of an efficient police," say the Select Committee of the House of Commons, "though an object of the first importance, appears to be a part of the new internal arrangements, in which the endeavours of the supreme government have been the least successful. With respect to the darogahs, or head police officers, who under the new system have taken the place of the Tannahdars, it is

observed of them, that they are not less corrupt than the Tannahdars, their predecessors; and that themselves, and the inferior officers acting under them, with as much inclination to do evil, have less ability to do good, than the Zemindary servants, employed before them. The darogah, placed in a division of the country, comprehending four hundred square miles, is, with fifteen or twenty armed men, found to be incompetent to the protection of the inhabitants."[1]

If the agents of police are greatly too few, the obvious remedy is to add to their number. The answer to this exhortation, however, is unhappily the same as that for the multiplication of the courts of justice. The finances of the Company will not endure the expense. In other words, the revenue of the country, instead of being applied to its only legitimate end, the protection of the people, is disposed of in a different way.

Not only are the agents of police defective in point of number, but adequate means are not employed to make them discharge the duties of their office. So far is this from being done, that the darogahs, and their people, add to the very evils which they are intended to suppress. By the Judge of Midnapore, in 1802, we are told, "The darogahs, I believe it is generally confessed, do not perform the duty that was expected. They are clearly either unable, or unwilling. Their insufficiency consists, I think, in a general neglect of duty, in petty rogueries, in a want of respecta-

[1] Fifth Report, p. 71.

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bility, in being destitute of that energy and activity, and that delicate sensibility to character, which ought to characterize a police officer. In the duties of his office, a darogah is hardly occupied half an hour a day: and he often becomes negligent, indolent, and, in the end, corrupt. His dishonesty consists in taking bribes from poor people who have petty foujdarry suits, in conniving at the absconding of persons summoned through him, in harrassing ryots with threats, or pretended complaints, creating vexatious delays in settling disputes, or preventing their being settled, and chiefly in deceiving the poor and ignorant, with whom he has to deal. The avowed allowances of a police darogah are not sufficiently liberal to render the office worthy the acceptance of men who are fit to perform the duty."[1]

The secretary of government says; "The darogahs of police seldom, if ever, possess any previous instruction as to the nature and extent of their duties, nor any habits of life calculated to enable them to perform those duties with effect. A brahmin, a sirdar, a moonshy, or even a menial servant, is, each in his turn, a candidate for this situation, of their fitness for which it is easy to judge. Their agency, even in furnishing information, a duty which requires no particular exertions or capacity is, totally ineffectual. Happy, however, would it be, if the defects already noticed were the greatest to be found in the character of the police darogahs. The vices, which render them a pest to the country, are,

[1] Fifth Report, p. 538.

their avarice, and addiction to every species of extortion."[1]

The description of the following scene of iniquity, in which the police agents are the principal actors, is necessary to convey a just idea of the state of this branch of the government. The Judge of circuit, in the Calcutta division, in 1810, in a paper addressed to the Judge and magistrate of the Zillah, says, "The practice, so nefarious and so prevalent, of extorting and fabricating confessions, requires your most serious attention. I remarked, with much concern, that, in every case of decoity brought before me, the proof rested on a written confession, given in evidence at the trial; and regret to add, that all those confessions bear the marks of fabrication. In one of these cases (No. 7 of your calendar), a prisoner, who was perfectly innocent, confirmed, before the magistrate, under the influence of improper means previously made use of towards him, a confession before a police darogah, which was proved on the trial to be false: and which had, in fact, been extorted by intimidation and violence. An erroneous idea prevails, that a confession is the strongest proof of guilt. This false notion, perhaps, first gave rise to the custom of fabricating them; and the practice appears to have increased, till it has become general and systematic. It would be endless entering into a detail of the different modes in which confessions are fabricated and proved. The usual course appears to be first, to apprehend as many people as caprice may dictate, and then to select from the number those individuals who are to con-

[1] Mr. Dowdeswell's Report on the Police of Bengal, in 1819, ibid, p. 611, 612.

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fess, and determine on the purport of their confessions. The preliminaries being thus arranged the victims are made over to the subordinate agents or instruments of police, to be dealt with according to circumstances; and the rest are discharged. It sometimes happens that they meet with a man whom they are able to deceive, by assurances of immediate pardon, and false promises of future favour and indulgence. In such case, he is usually told, that by signing a paper, prepared by the buckshee for that purpose, or repeating before witnesses what he is instructed to say, he will not only escape hanging, or, at least, perpetual imprisonment, but become one of the chosen of the police, and make his fortune as a goyendah; that all he has to do, is to pretend that he was concerned in the decoity, and say, that the gang was composed of particular individuals who are named to him, and leave the rest to the darogah. In short, the alternative is offered him, either of making a friend or an enemy of the police; either of suffering ignominious death through their power, or of raising himself to a post of honourable ambition and profit by their favour. When these means fail, they have recourse to compulsion. In this event the prisoners are taken out singly, at night; and subjected to every species of maltreatment, till they consent to subscribe before witnesses, to the contents of a confession, drawn up for their signature by the buckshee; or to learn it by heart, and repeat it in their presence. When the prisoner is thus prepared, if there appears no danger of his retracting before morning, he is left at peace for a few hours; but if any apprehension of that sort is entertained, a burkundaaz is sent for three or four

people of the village, to witness the confession instantly, and they are roused from their sleep at all hours of the night for that purpose. It is to be observed, however, that the sending for impartial witnesses does not often occur, except when the darogah has not sufficient weight or talent to keep his place, and at the same time set appearances at defiance. A darogah who is sure of his post, will, with the utmost impudence, send in a confession witnessed only by a few pykes, or other police dependants, who were, perhaps, the very instruments by whose means it was extorted." The fabrication of evidence in general, and the subornation of perjury for that purpose, is declared by the same indubitable authority to have become "a prevailing practice with the agents of police."[1]

When such are the deeds of the very men by whom the crimes of others are to be suppressed, it is easy to judge of the sort of protection which the British government has succeeded in providing for the people of India.

The Secretary, Mr. Dowdeswell, complains, that powers, far too great, are intrusted in the hands of those men. They have not only the executive powers of a constable and sheriff's officer, but those united to them of a justice of the peace: they have the power of receiving charges and information without limit; the power of receiving them on oath, or dispensing with the oath, a power of great moment, considering the prejudices of the natives with regard to an oath; the power of proceeding by summons or

[1] Fifth Report, p. 595, 596.

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arrest, at discretion; the power of referring or not referring the determination to the magistrate; of fixing the amount of bail; of making, or, if they please, causing to be made, a local inquiry upon the recent commission of any robbery or violent offence; and, finally, of apprehending and sending to the magistrates all persons under the vague denomination of "vagrants and suspected persons:" "powers," adds Mr. Dowdeswell, "which never have been confided to any subordinate peace-officers in England: and which, indeed, would not be tolerated for a moment in that country: powers, the interposition of which, by the hands of the Indian darogahs, are attended with intolerable vexations."[1]

The means, employed for accomplishing the ends of a police, have, therefore, been ignorantly devised. "It is now," say the Committee of the House of Commons, "unequivocally acknowledged on the proceedings of government, *that the existing system of police has entirely failed in its object.*"[2] The Judge of Circuit, in the Rajeshahye division, in 1808, with indignation says: "The present wretched, mechanical, inefficient system of police, is a mere mockery."[3]

The extraordinary imperfection of the system of police, I rank as the second of the causes of the great

[1] Report on the Police of Bengal, Fifth Report, p. 611, 612.

[2] Fifth Report, p. 73. This expression, if authority can give it force, deserves peculiar attention. It was first employed by Mr. Lumsden, a member of the Supreme Government, recorded on the 13th of June, 1808; it was quoted, as authority, confirming the declaration of his own opinion, by Mr. Secretary Dowdeswell, in his Report in 1809, on the Police of Bengal; and lastly it is quoted, as expressing the result of their own inquiries, by the Committee of the House of Commons.

[3] Fifth Report, p. 586.

prevalence of crime, and the insecurity of persons and property in Bengal.[1]

The next of these causes is an infirmity which adheres to governments in general, to many of them in a greater degree than the Anglo-Indian government: the obstinate determination to believe that every thing which they do is excellent; and, of course, that every institution which they set up must of necessity accomplish its end. This most pernicious propensity appears to have long completely blinded the Indian government to the deplorable imperfections attaching upon, and characterizing, every

[1] It should rather have been the first. The commission of crime was encouraged rather by the impunity by which it was attended before trial than after it. The culprit was not apprehended, or if apprehended, evidence could not be brought against him to secure his conviction. No code of law, however, can ensure the depositions of witnesses—this is a matter of police.—Whatever may be the theoretical perfection of a penal code, the police must be effective, to protect witnesses against the vindictive resentment of a culprit, and his confederates, or guilt can never be proved. It was to this latter defect that those who were guilty of gang-robbery looked for impunity, much more than to any want of enactments to punish the guilt which had been established by adequate testimony. The state of the police was, undoubtedly, very bad at the time referred to in the text, but even then, active European superintendence could and did communicate to it efficiency. Gang-robbery was suppressed very shortly afterwards by the energy and intelligence of one or two individual magistrates. Instances of it have no doubt occurred since, but they have been comparatively rare, and attended with less atrocious circumstances. The organization of the Police is still defective—the principal officers are ill paid, the numbers of the establishment are ill-proportioned to the immense tracts of country over which it is spread. The evils resulting from these circumstances are admitted, and attempts are now in course of progress to construct a system of greater efficiency. The wisdom and necessity of the determination cannot be denied, although it is not so easy as it might be thought, to discover the means by which it is to be carried into practice. In the mean time, it may be asserted, notwithstanding all the dark colouring of the Fifth Report, that public order and private security are maintained in India in a very extraordinary manner, and that few countries in Europe so little require the constant interposition of the Police.—W.

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department of that institution of government which was set up by the regulations of 1793. The imperfections of even the system of police, those which were the most obvious to ordinary eyes, they not only continued determined not to see; but, such was the pernicious influence of their authority, that individuals were deterred either from allowing themselves to believe, or, at any rate, from the important duty of making known, the vices of the system. "What," says the Judge of the Circuit, in the Benares division, in 1808, after a long display of the evils to which those horrid vices were giving birth, "may be thought of the weight of the preceding reasoning, I know not. A very few years back, I should have been afraid, in advancing the arguments which I have offered, of exposing myself to the imputation of singularity. I have now the satisfaction to find that some of my conclusions, at least, are sanctioned by the highest authority. The preamble to Regulation Twelfth, of 1807, declares, that the police establishments in the provinces, those establishments on which we have relied for sixteen years, are inefficient."[1] The Committee of the House of Commons, with some indignation, remark, that, "though the letters from the Bengal government, down to April, 1806, represent the commission of crimes, particularly perjury, to be increasing rather than the contrary, there is nothing said to excite any particular apprehension for the security of person and property enjoyed by the natives under the British government, or to create any doubt in regard to the new system

[1] Fifth Report, p. 577, 578.

of police having secured to the natives the benefits which were intended for them by its introduction."[1]

Another cause, a natural consequence of the former, is, the temptation under which the servants of the state are placed, to represent in a flattering light the proceedings of government; to keep back, or explain away, the disagreeable consequences; to exaggerate those that are pleasant; and, very often, to suppose and describe such as never exist. Governments are thus deceived, and remain in ignorance of what above all things it imports them to know; the extent to which the institutions of government fall short of accomplishing the ends for the sake of which they exist. What is stated by Mr. Dowdeswell is worthy of particular attention, and indelible remembrance; That this unhappy propensity, which is a power of such extensive and such pernicious operation in all governments, is the foremost among the causes of the disgraceful state of Anglo-India. "The *principal* cause," says the Secretary, in his instructive report on the police of Bengal, "why the measures, hitherto adopted for the protection of the people against robbery by open violence, have been ineffectual, is, the very imperfect information which government, and the principal authorities under government, possessed, respecting the actual state of the police.—The defect here noticed," he continues, "may arise, either from the very imperfect information which the local magistrates themselves possess respecting the state of the police, or from an ill-judged, but not an unnatural, solicitude, to represent

[1] Fifth Report, p. 73.

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the districts in the most favourable state possible."[1] It is also in the highest degree worthy of being pointed out to general attention, that the Select Committee of the House of Commons, appointed in 1810 to inquire into the affairs of India, have selected this prevailing vice in almost all governments, as the object of their particular reprobation. "Your Committee," they tell the House, "must here express their opinion of the dangerous tendency of indulgence in the disposition alluded to; of representing districts, or things, to be in a more favourable state than they really are: As this may lead; first, to a postponement of the communication of unpleasant circumstances; next, to the suppression of information; and, finally, to the misrepresentation of facts."[2] Of one thing, however, we may remain assured, as of a law of nature, that so long as the wisdom and virtue of governments are in too low a state to recognise the indication of defects as the most useful information which it is possible for them to receive; the dependants of government, who hence find it their interest to report what is agreeable, will be sure to mislead. A sufficient antidote would exist, in a free press, under the unsparing operation of which governments would remain ignorant of none of their defects. Solid objections may indeed be started to the institution as yet of a free press in India, though objections of much less weight than is generally imagined. But the existence of a free press, in any state of society, or under any circumstances, it is the constant, strenuous, and wicked

[1] Fifth Report, p. 607. [2] Ibid. p. 73.

endeavour of almost all governments, utterly to prevent.

The parliamentary committee carry their investigation to the highest source; they accuse the Indian government, itself, of acting under the influence of this destructive vice; and, in its representations to the authorities at home, of describing things in India as in a far better situation than they really are. From general knowledge, the experienced mind would easily infer the existence of this deceptive propensity, and its operation, to a great extent. It is necessary to have studied particularly the documents of our Indian history, to know with what unusual strength it operates in the breast of almost every man who has been connected with the government of India; in a word, to have any conception to what an extent the British people have been deluded, and continue to be deluded, with flattering accounts of what is described as "their empire in India." In the whole correspondence of the Bengal government with the Court of Directors, down to April, 1806, the Committee remark, that not a syllable is found expressive of any failure in the system of police, though from the year 1801, "the reports of the circuit judges, at the conclusion of each session, evinced the prevalence of gang-robbery, not only in a degree sufficient to attract the notice of the government, but to call forth its endeavours to suppress it."[1]

Another cause of the disorders of India, a cause, too, of which it is highly important to convey a just

[1] Fifth Report, p. 73, 74.

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idea, is the overweening estimate which our countrymen are prone to make, not only of their own political contrivances in India, but of the institutions of their own country in the mass. Under the influence of a vulgar infirmity, That *Self* must be excellent, and every thing which affects the pride of *Self* must have surpassing excellence, English institutions, and English practices, have been generally set up as a standard, by conformity or disconformity with which, the excellence or defect of every thing in the world was to be determined. With moderate taxes, under a government which protects from foreign violence, the only thing necessary for the happiness and the rapid improvement of the people of India, is a good administration of justice. But to this great object the circumstances of the people, and the moral habits left in their minds by superstition and despotism, oppose a formidable resistance. To afford in any tolerable degree the protection of law to the people of India, is a far more difficult process than it is in England; and for its accomplishment, a far more perfect system of legal and judicial provisions, than what is witnessed in England, is indispensably required. Of this the rulers in India have not attained the slightest conception; and hence the many ill-contrived measures to which they have had recourse.[1]

[1] It is not so difficult to afford to the people of India effective protection as it is to the people of England or other European countries, as the former are of a less turbulent character, and have an almost servile respect for official authority. It is, however, quite true, that it is a great mistake to attempt to afford it in the same way: to set aside all local usages and practices, and to remodel the police of India after the approved receipts of the Home Office. The adaptation of local means to local ends should be

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Of part of the difficulties under which the administration of justice labours in India, some conception may be formed, from the description which has already been given of the agents of police. The state of the people is such, that trustworthy instruments cannot be found. In a more favourable state of the human mind, that large portion of the field of action which it is impossible to reach with the terrors of law, is protected by the sentiments of the people themselves: they distribute towards individuals their favour and abhorrence, in proportion as those individuals observe or violate the general rules on the observance of which the happiness of society depends; and of so much importance to every man are the sentiments with which he is regarded by those among whom he lives, that without some share of their good opinion, life itself becomes a burden. In India there is no moral character. Sympathy and antipathy are distributed by religious, not by moral judgment. If a man is of a certain caste, and has committed no transgression of those ceremonies by which religious defilement or degradation is incurred, he experiences little change in the sentiments of his countrymen, on account of moral purity or pollution. In employing the natives of India, the government can, therefore, never reckon upon good conduct, except when it has made provision for the immediate detection and punishment of the offender.

The proneness of the natives to mendacity and perjury, renders the evidence of judicial facts in India so weak and doubtful, as extremely to increase the diffi-

carefully considered, if the latter are to be attained in India as well as in other countries.—W.

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culties of judication. The intelligent Judge of Circuit, in the Rajeshahye division, in 1808, thus describes the state of evidence in the Indian courts. "Every day's experience, and reflection on the nature of our courts, and the minds and manners of the natives, serve to increase my doubts, about our capacity to discover truth among them. It appears to me, that there is a very great deal of perjury, of many different shades, in our judicial proceedings: and that many common rules of evidence would here be inapplicable and absurd. Even the honest men, as well as the rogues, are perjured. The most simple, and the most cunning, alike, make assertions that are incredible, or that are certainly false. If the prosecutor, in cases of decoity, was always to be disbelieved because there was perjury, scarce a decoit would be convicted. By cross-examination, you may draw an honest witness into as many absurdities and contradictions as you please.[1] It is not easy to detect the persons who come forward as eye-witnesses, in cases of decoity. Their story is all true—but one point; the identity of the persons whom they accuse: and how can you discover whether this is true or false? Some witnesses are loquacious, some taciturn; some frigid, some over zealous; some willing, some unwilling; some bold, some timid, some scrupulous: some come to give false evidence, in favour of a friend, or master; some to ruin an enemy; and the signs of the different modes that disguise truth are so very equivocal, and often so

[1] This is not restricted to India, although it may happen more frequently than in England, through the greater timidity and simplicity of the witnesses. Such prevarication is not to be confounded with wilful falsehood—W.

unintelligible, that nothing can be depended on. There is not one witness in a dozen on whom you can rely for a purely true story. It has very often happened, that a story, which, by attending only to the plain direct course of things, I believed to be true, has, by examining into matters apparently connected in a very distant degree with the case, turned out to be entirely false. I am afraid that the evidence of witnesses in our courts is, for the most part, an instrument in the hands of men: and not an independent, untouched source of truth."[1]

"In the course of trials," says Sir Henry Strachey, "the guilty very often, according to the best of my observation, escape conviction. Sometimes, an atrocious robbery or murder is sworn to, and in all appearance clearly established by the evidence on the part of the prosecutors; but when we come to the defence, an *alibi* is set up; and though we are inclined to disbelieve it, if two or three witnesses swear consistently to such *alibi*, and elude every attempt to catch them in prevarication or contradiction, we are thrown

[1] Fifth Report, p. 589.—M. Very much that has been mistaken for falsehood and perjury by English judges, has been little else than their own ignorance—they have not understood the character of the natives with whom they have had to deal—have made no allowance for the circumstances of their situation, and although not wholly unacquainted with the language, have not understood it sufficiently to appreciate its phraseology. The impatience too, which is commonly characteristic of the juvenile Indian judge, is very unfavourable to the elicitment of truth from a native witness. See, upon this subject, the remarks of Sir H. Strachey, quoted in a subsequent page. There is also another source of exaggeration, if not of error, in these opinions of the Indian Judges, which has not been sufficiently adverted to: their whole experience is confined to India: they have no standard of comparison: could they preside at the Old Bailey for a sessions, they would probably discover, that very much of that which they deprecate, is not peculiarly Indian, but characterises fraud and crime in all times and in all countries.—W.

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into doubt, and the prisoners escape. Very frequently the witnesses on the part of the prosecution swear to facts in themselves utterly incredible, for the purpose of fully convicting the accused: when, if they had simply stated what they saw and knew, their testimony would have been sufficient."[1]

In another place he declares; "A rich man can seldom be convicted of a crime at a gaol-delivery. If committed on the strongest positive testimony before the magistrate, he without difficulty brings twenty witnesses on his trial to swear an *alibi,* or any thing else, that may suit his case; or he can bribe the prosecutor, or his material witnesses. He has besides a very good chance of escaping by the mere contradictions of the witnesses against him, particularly if what they have to depose to is long or intricate, or happened at a distant period; or was seen and heard by many witnesses of different descriptions and characters; or if many facts, names, and dates, are to be recollected. No falsehood is too extravagant or audacious to be advanced before the Court of Circuit. No case, at least no rich man's case, is desperate for a defence, supported by counter-evidence; and if once doubts are raised, no matter of what kind, the object of the accused is gained, and he is secure. Perjury is extremely common, and though it occurs much more frequently on the part of the accused than of the prosecutor, yet I have known several instances of conspiracies and false complaints supported by perjury. The judge who has once had experience of a case of this kind is soon plunged into doubt and perplexity, continually awake to the possibility of the wit-

[1] Fifth Report, p. 561.

nesses against the accused being forsworn: and as he of course leans to the favourable side, the consequence must be, that the guilty frequently escape."[1]

Whenever you fail to a certain extent in assuring protection to the innocent, and punishment to the guilty, the criminal is enabled to employ the great instruments of government, punishment and reward, in his own defence Such is the *military* strength of the British government in Bengal, that it could exterminate all the inhabitants with the utmost ease; such at the same time is its *civil* weakness, that it is unable to save the community from running into that extreme disorder, where the villain is more powerful to intimidate than the government to protect. The judge of circuit of the Rajeshahye division in 1808, says: "The decoits know much better than we how to preserve their power. They have with great success established a respect for their order, by speedy, certain, and severe punishments, and by judicious arrangements for removing obstacles, and for facilitating the execution of their plans. There are two grand points for the decoits to effect; first, to prevent apprehension; second, to prevent conviction. For the first, they bribe the Zemindary and police officers. For the second, they torture and murder the informers, prosecutors, and witnesses, who appear against them. The progress of this system is dreadful: the decoits become every thing; and the police, and the criminal judicature, nothing."[2]

[1] Fifth Report, p. 534.

[2] Fifth Report, p. 587. "On my way through the northern parts of this Zillah," he continues, "I had some conversation with a Zemindar, and a police darogah, who have distinguished themselves by their exer-

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"This we know," says the same enlightened Judge in another passage, "that a sirdar decoit has generally the means of saving himself from conviction; and that, although all the world say that he is a notorious robber and murderer, not an individual can be found who will give evidence against him. This is a dreadful state of things: and so it must remain, till confidence is restored to the people by removing their well-grounded fears, by extirpating the sirdars, and giving a real efficiency and vigour to the police."[1]

"The terror of decoits among the ryots," says Sir Henry Strachey, "is excessive. Persons who have families and property deem it extremely rash and dangerous to prosecute, or to appear as witnesses against men of such desperate character as the decoits of this country. Indeed it is with the utmost difficulty that they can be prevailed upon to come forward, even in cases where they have received personal injury, and where they have not to speak to the persons of the prisoners, but merely to identify the property found in their possession."[2]

Such is the nature, such the extent, and such the causes of the evil. The remedies surely constitute an important object of inquiry. The government attempted to oppose the torrent by changes in the rules of police, and by adding to the severity of punishment. Under these expedients, enormities

tions to apprehend decoits; they told me that it was impossible to get any information about the great decoits; that the houses of all the principal inhabitants were open to them: yet that nobody dared mention their names, for fear of being murdered." Ibid.

[1] Ibid. p. 591.

[2] Ibid. p. 661, 554, 534.

continued to increase till 1807, when a more efficacious remedy was thought to be required. The Zemindars, who formerly exercised a power almost despotic over the districts consigned to their care, and who maintained a large establishment of armed men, with a commission for the suppression of crimes, were enabled, as often as they had activity and good will, to suppress by arbitrary execution all violent offences but their own. One robber in a district was better than a multitude. But Lord Cornwallis, impressed with the evidence of the abominable use made of this power by the Zemindars, in exercising oppression on the people submitted to their jurisdiction, resolved to deprive them of all exercise of any of the powers of government; and laid it down as a rule, that the union of the functions of revenue with those of police or judicature, was a fundamental error, from which nothing but misgovernment could ensue. Notwithstanding this, the rulers of 1807, with that sort of empirical impulse, by which the vulgar tribe of rulers are usually conducted, took up the notion, that if the Zemindars had once preserved the country from decoits, the Zemindars truly might do so again. In spite of the grand rule of Lord Cornwallis, the Zemindars, farmers of land, and others of the principal inhabitants, received the title of aumeens of police, and were vested with the same authority as the darogahs for the apprehension of offenders, but without the judicial powers intrusted to the darogah in the case of petty offences and disputes.

Not only was this expedient for the suppression of crimes attended with no good effects; it was attended

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with so many of a contrary description, that in 1810 it was abolished. Other expedients in the mean time had been invented and tried. In 1808, a superintendent of police was appointed; whose labours were expected to have the effect of concentrating information, and giving unity and combination to the efforts of the magistrates in the separate districts. A regular establishment was also organized of police spies called *goyendas*, with a species of superintendents called *girdawars*, who had in some degree been employed from 1792. The office of the goyendas was to point out the robbers: that of the girdawars to apprehend them.[1]

So imperfectly were those means adapted to the end in view, that in a despatch of the Governor-General, under date the 29th of May, 1810, the extent of the mischief is thus described: "The evidence lately adduced, exclusive of a multiplicity of other proofs, establishes beyond a question, the commission of robberies, murder, and the most atrocious deliberate cruelties: in a word, an aggregate of the most atrocious crimes. Nor let it be supposed, that these offences were of rare occurrence; or confined to particular districts. They were committed, with few exceptions, and with slight modifications of atrocity, in every part of Bengal."[2]

The inconvenience which attended the employment of goyendas was of the same nature with that which attended the employment of darogahs: instead of protectors, they themselves became the

[1] Fifth Report, p. 74. [2] Ibid. p. 72.

plunderers and murderers of the people. Sir Henry Strachey informs us, that "the people are harassed by the vexatious visits and outrages, and the plunder of goyendas and girdawars; who constantly, when supported by the least colour of authority from the magistrate, intimidate, extort, suborn, and rob, under pretence of bringing offenders to justice."[1]

The head-money which was granted for the conviction of decoits pointed out a ready way to the darogahs and goyendas, in confederacy, for acquiring riches, by fabricating evidence against as many innocent persons as they chose. A member of the government, in 1810, in a minute in which he advocated the employment of goyendas, made the following admission: "That abuses have been practised by goyendas or informers, but still more by girdwars, or those intrusted with power to apprehend, is unquestionable. Seeking a livelihood, by the profession in which they had engaged, but not able always to procure it, by the slow means of the detection of crimes and proof of guilt, they have, no doubt, resorted, but too often, to various modes of extortion; sometimes from persons of suspected character; and, at other times, from the honest part of the community, under threats of accusation: and have occasionally proceeded to prefer groundless charges, and even to support them by false evidence: and instances have actually occurred, where there has been too much reason to believe, that the goyenda himself devised the robbery, of which he convicted the unhappy wretches, reduced by his arts

[1] Fifth Report, ut supra, p. 561.

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to a participation in the crime." To such a height had the enormity of convicting innocent persons, for the sake of the head-money, proceeded, that in 1810, the necessity was felt of destroying the temptation, by putting the reward offered for the conviction of offenders on a new foundation. And the Committee of the House of Commons thus report; "The bad practises, used by goyendas, your Committee find noticed strongly in the answer to the interrogatories circulated in 1801. There must consequently have been a wide field for the goyendas to move in, from their first appearance in 1792, until the period referred to, in 1810, when the modification of the reward or head-money considerably narrowed the ground on which they had been accustomed to practise their atrocities. The proceedings of the courts of justice, and the reports of the judges of circuit, furnish a strong confirmation of what has been stated with respect to the unprincipled practices of that description of people; and of the evils resulting from a combination between them, and the darogahs, or head police officers, for the purpose of sharing with them the head-money for decoits."[1]

To the villainy of the police agents is attached a considerable danger, lest, being employed by the magistrates, and necessary to their functions, the magistrates should contract a reluctance to believe in their guilt. It is in evidence, that the reality of this evil is but too frequently experienced. The Judge of circuit, reporting on the state of the twenty-

[1] Fifth Report, ut supra, p. 75.

four pergunnahs in 1810, says: "Several petitions were presented to me in the course of the session. Those of the greatest public importance complain of the rapacity, oppression, and gross and daring acts of illegal violence and rapine committed by goyendas; and strong disinclination evinced on the part of the magistrate to redress grievances of that description."[1]

To remedy the defects of the provision made by Lord Cornwallis, for the administration of penal justice, such were the supplemental measures employed till 1810, and such their effects. It is proper also to consider what proposals were made of other means for the attainment of the same end.

One thing recommended was, to re-invest the Zemindars with powers of police; and among the interrogatories circulated by government in 1801, the opinion of the judges was asked, on "the expediency of granting to Zemindars, farmers, and other persons of character, commissions empowering them to act as justices of the peace." Among the most intelligent of the Company's servants, one opinion, on this subject, seems alone to exist. "I am persuaded," says the magistrate of Burdwan, "that to vest the Zemindars and farmers of this district with the powers proposed, would not only prove nugatory for the objects intended, but be highly detrimental to the country, and destructive of the peace of the inhabitants. Few of the Zemindars and farmers, of any respectability, reside on their estates and farms. Allow them to exercise a power equal to the pur-

[1] Fifth Report, ut supra, p. 597.

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poses, and to vest with it by delegation, their agents or under farmers, the worst and most mischievous consequences are to be apprehended from their abuse of it."[1] On the same occasion, the magistrates of the twenty-four pergunnahs say, "From the general character of the Zemindars, farmers, and other inhabitants of the districts, we do not think that it would be advisable to vest any of them with the powers of justices of the peace. On the contrary, we are of opinion, that such a measure, so far from being in any way beneficial to the police of the district, would be a source of great oppression to the lower class of the inhabitants, and of innumerable complaints to the magistrate."[2]

They add, "We have reason to believe, though it is difficult to establish proof against them, that the Zemindars, not only, in many instances, encourage and harbour decoits, but frequently partake of the property plundered by them. The *chokedars* and *pykes* employed by them, are concerned in almost every decoity committed in the districts subject to our jurisdiction."[3]

To the same purport, the Judge of circuit in the Rajeshahye division says, in 1808: "My informants attributed the success of the decoits to the same cause that every body else does; namely, the protection given them by the Zemindars and police officers, and other people of power and influence in the country. Every thing I see, and hear, and read on this subject, serves to convince me of the truth of this statement."[4]

[1] Fifth Report, ut supra, p. 549. [2] Ibid. p. 555. [3] Ibid. p. 554.
[4] Ibid. p. 587.

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Sir Henry Strachey, as usual, reasons with much intelligence upon this subject. "It is extremely difficult," he says, in his reply to the same interrogatory, "I may, I believe, say it is not possible to arrange an effectual plan of association and co-operation, among the higher orders, for purposes of police, or for any other purpose. We have few large towns; no societies exercising or capable of exercising municipal authority.—There are no gentlemen, in whose honour and probity, in whose spirit and activity, government can repose confidence—There exists not, between the common people and the rulers, a middle order, who feel a common interest in the prosperity of the state; who love their countrymen, who respect their rulers, or are by them respected; who either could, or, if they could, would, even in a case of the greatest exigency, exert themselves heartily and effectually, each in his own sphere, for the public good. Such a set of men in the society is here unknown. Government is unable to direct, or in any way to make use of, the power of the individuals composing the community. Hence our extreme ignorance of all that passes; our complete inability to detect and apprehend offenders; to explain to the public what we wish should be known; and persuade them what should be done. Hence the long continuance of enormous abuses without its being possible for government, or for the magistrate, to prevent or to discover them."[1]

"It should," he says in another place, "be the

[1] Fifth Report, ut supra, p. 537.

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study of government, in my opinion, to form, if possible, a body of gentry, such as exists in other countries; an intermediate order, between the governors and the governed, to whom the one might look down, and the other might look up. At present, no such order exists. Most of the men who once possessed rank and wealth, are gone to ruin. The men of property who do exist are, for the most part, such as have lately risen. That the magistrate can maintain the peace over a million or more of persons, without the help of a considerable number whose interest or sense of duty should induce them to assist him, is plainly impossible."[1]

The Judge of circuit in the Benares division, in 1808, descants with great warmth upon the same topic; the extreme difficulty of maintaining order in any country, without the assistance of a superior class of inhabitants incorporated with the people, and possessing that influence which superior property and education confer, over others deprived of those advantages. "In maintaining this opinion I may," says he, "unless I greatly deceive myself, appeal to the general practice of almost all nations, originating, doubtless, in circumstances and feelings common to all mankind. The natural mode of managing men is to employ the agency of those, whom, from the relation in which they stand to them, they regard with respect and confidence. Accordingly, all governments seem to have made the authority of these native leaders the basis of their police: and any hired police establishment which they maintain are

[1] Fifth Report, ut supra, p. 561

not intended to supersede the native police, but to superintend, watch, and aid its efforts. To take an example with which we are all familiar. In our own country we all know what services the society contributes to its own protection. We know how much vigour is conferred on its police, by the support which it receives from native gentry, from respectable landholders, from the corporations in towns, and from substantial persons of the middle class in the villages. We can form some conception of the mischief which would ensue, if that support should be withdrawn, and an attempt made to compensate it by positive laws and artificial institutions."

Such is the extreme difficulty of distributing justice to a people without the aid of the people themselves! Such, at the same time, is the utter impracticability, under the present education, circumstances, and character, of the people of India, of deriving from them the aid which is required! Without a tolerable administration of justice, however, which the people of India are so far from enjoying, every man will acknowledge, that all attempts to improve either their circumstances or their character, must be attended with disappointment. What then is the inference? Are the government and the people to go on, for ever, in their present deplorable situation; the people suffering all the evils of a state of anarchy; the government struggling with eagerness to help them, but in vain?

If it were possible for the English government to learn wisdom by experience; which governments rarely do; it might here, at last, see, with regret,

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some of the effects of that illiberal, cowardly, and short-sighted policy, under which it has taken the most solicitous precautions to prevent the settlement of Englishmen in India; trembling, forsooth, lest Englishmen, if allowed to settle in India, should detest and cast off its yoke![1] The most experienced persons in the government of India describe, what to them appears the difficulty, almost or altogether insuperable, of affording protection either to person or property in that country, without the assistance of persons of the requisite moral and intellectual qualifications, rooted in the country, and distributed over it in every part. They unite in declaring that there is no class in India who possess these qualifications; that the powers necessary for an efficient police cannot be intrusted to the Zemindars, without ensuring all the evils of a gross and barbarous despotism. And they speak with admiration of the assistance rendered to government by the gentlemen distributed in every part of England. Is it possible to avoid seeing; and seeing, not to acknowledge, the inestimable service which might have been derived, in this great exigency, from a body of English gentlemen, who, if they had been encouraged to settle, as owners of land, and as manufacturers and merchants, would at this time have been distributed in great numbers in India? Not only would they have possessed the requisite moral and intellectual quali-

[1] It is wonderful to see how the English government, every now and then, voluntarily places itself in the station of a government existing in opposition to the people; a government which hates, because it dreads the people, and is hated by them in its turn. Its deportment with regard to the residence of Englishmen in India speaks these unfavourable sentiments with a force which language could not easily possess.

fications, a thing of inestimable value; but they would have possessed other advantages of the highest importance.[1]

The representation of Lord Teignmouth is lamentably true, That the civil servants of the Company, enclosed in government offices from the time of their arrival in India, have neither leisure nor opportunity to become acquainted with the people; and that the periods of their residence, from their being in a state of perpetual change, come to an end, before they are able to acquire either local knowledge or experience.[2] Among the circumstances to which the best of the Company's servants ascribe their deplorable inability to afford protection to the people, their own ignorance of the local manners, character, and circumstances, occupy a conspicuous rank. In an enumeration of the causes which concur to prevent the due administration of justice, Sir Henry Strachey says; "Another impediment, though of a very different nature from those I have mentioned, and much more difficult to remove, is to me too palpable to be overlooked: I mean, that arising from Europeans, in our situation, being necessarily ill qualified in many points, to perform the duties

[1] Upon no subject relating to India have more erroneous impressions been entertained, than that of allowing Europeans to hold lands in India. The permission has been now granted them for several years, and where is the numerous body of respectable English landholders, who, according to the view taken in the text, are to render inestimable services to the Government in preserving the peace of the country? Scarcely any have availed themselves of the permission, and the Government must seek for aid in the management of the criminal and civil justice of the country from that quarter alone from which it is naturally to be expected—the people themselves—under active and enlightened European official superintendence.—W.

[2] Mr. Shore's Minute, Fifth Report, p. 169.

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required of us, as judges and magistrates. Nothing is more common, even after a minute and laborious examination of evidence on both sides, than for the judge to be left in utter doubt respecting the points at issue. This proceeds chiefly from our very imperfect connexion with the natives, and our scanty knowledge, after all our study, of their manners, customs, and languages. The judge of circuit, and his assistant, are strangers, and quite unacquainted with the character of the persons examined, and the credit due to them; and always on that account less competent to discover truth among volumes of contradictory evidence."[1] On another occasion he asks, "What judge can distinguish the exact truth, among the numerous inconsistencies of the natives he examines? How often do those inconsistencies proceed from causes, very different from those suspected by us? How often from simplicity, fear, embarrassment in the witness? How often from our own ignorance and impatience? We cannot study the genius of the people, in its own sphere of action. We know little of their domestic life; their knowledge, conversation, amusements, their trades and castes, or any of those national and individual characteristics, which are essential to a complete knowledge of them. Every day affords us examples of something new and surprising: and we have no principle to guide us in the investigation of facts, except an extreme diffidence of our opinion; a consciousness of inability to judge of what is probable or improbable." He adds, "The evil I complain of is extensive, and, I fear, irreparable.

[1] Answer to Interrogatories, Fifth Report, p. 534.

The difficulty we experience in discerning truth and falsehood among the natives may be ascribed, I think, chiefly to our want of connexion and intercourse with them; to the peculiarity of their manners and habits;—their excessive ignorance of our characters—and our almost equal ignorance of theirs."[1]

It is impossible to reflect upon the situation of English gentlemen, settled in the country, as proprietors of land, and as manufacturers, without perceiving how advantageously they would be situated for acquiring that knowledge of the natives, in which the Company's servants are proved to be so defective; and for giving that aid in the administration of justice, without which a good administration is not to be attained. Such men would be forced into an intimate intercourse with the natives, whence, under the necessity of employing them, and of transacting and conversing with them in almost all the relations of life, an intimate knowledge would arise. They would have a local influence of great efficacy. They would be useful, beyond all calculation, in maintaining order in a wide circle around them, among a people in such a state of society as that at present found in Bengal.[2]

[1] Answers to Interrogatories, Fifth Report, p. 562.

[2] As an additional proof, if any additional proof were wanting, of the benefit which might be derived from the multiplication of English settlers; it may be mentioned, as a matter of present experience, that the Englishmen, the most thoroughly conversant with the language and manners of the people, are generally those who have been tolerated, as private adventurers, in some line of industry in the country. A conspicuous example lately appeared. A gentleman of the name of Blacquiere, not in the service of the Company, but who had lived in India in the pursuit of private objects, was found so much better qualified than any of the servants of the Company, by his knowledge of the language and manners of the country,

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Though in most of their reports, the Judges regard a remedy as hopeless; yet there is one recommendation in which a considerable number of them concur. As trials are delayed, and crimes escape punishment, by a deficiency in the number of tribunals, the periodical visits of the judges of circuit being inadequate to the demand for justice, it is proposed, that the magistrates in the Zillahs should be vested with the powers of penal judication. To this recommendation, however, several weighty objections apply. In the first place, the civil judicature in the Zillahs is already a duty far too heavy for the judges to discharge; and the arrear of causes produces a delay, which approaches to a denial, of justice. If in the hands of those judges the business of penal judicature were to be added to that of civil judicature, the number of them ought to be doubled; and that, we are told, the finances of the Company will not allow. Besides, according to the routine of the Company's service, the judges in the Zillahs are generally too little advanced in years and experience, to be intrusted with the powers of life and death, or any powers approach-

and had actually rendered so much service as a magistrate of Calcutta, that he was vested with extensive powers over several districts. After the private traders in India, the officers of the sepoys, from their intercourse with their men, are the best acquainted with the natives; and would very often form the best judges and magistrates. Lord Cornwallis, not finding a man among the civil servants of the Company at Madras, tolerably acquainted with the language and manners of the country, appointed sepoy officers to be collectors and managers in the newly-acquired districts; and the great success of the experiment proved the wisdom of the choice. The services which were rendered by such officers as Read and Munro, in establishing order in extensive countries, show to what practical excellence the government of India might be carried, if Englishmen, incorporated with the natives as landlords and manufacturers, were intrusted with the powers of police.

ing to that importance, under so many chances of error as accompany judicature in India.

As the number of darogahs and their establishments would be far too small to prevent the disorders of the country, even if they were faithful to their trust, some of the judges propose, that their numbers should be increased, and their salaries augmented. To this, too, the objection of the government would be, that the finances cannot admit the expense. A more legitimate objection is, that by increasing the number of darogahs they would only increase the number of privileged plunderers: and that it is one of the most imbecile of vulgar prejudices to suppose, that large salaries make honest men.[1] So long as things were so miserably organized, that gain, unbalanced by danger, would accrue to the darogahs, by violating their duties, they might be expected to violate them, if their salaries were as large as those of the Governor-General.

Some of the Company's servants, among others Mr. Dowdeswell, argue strongly for the employment of spies and informers. Their abstract, general arguments, to show that informers are useful auxiliaries to justice, are good and conclusive. Make justice certain, immediate, unexpensive, at the tribunals, and every act which spies and informers can perform, will be an act of utility. But if, in India, your securities for justice are so wretched, that by employing spies, you only create a new class of robbers, and let loose upon the people an order of men

[1] This is a notion, the fallacy of which has been previously demonstrated. Adequate allowances diminish chances of temptation, and render character of too much value to be slightly hazarded.—W.

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who carry on their depredations with the arms of government, you increase instead of diminishing the disorders of the country.

Contemplating this accumulation of difficulties, the Company's servants in general appear to regard the case with a kind of despair; or at least to contemplate the evil as rooted so deeply in the moral character of the people, that it cannot be removed, unless by the slow improvements which it may be possible for education to effect.

After the recommendation of some of the above expedients, of the efficacy of which his hopes were but too sanguine, Mr. Dowdeswell said; "I am at the same time sensible that a great deal more must be done in order to eradicate the seeds of the crimes most injurious to the peace and happiness of society. The real source of evil lies in the corrupt morals of the people. Under these circumstances, the best laws can only have a partial operation. If we would apply a lasting remedy to the evil, we must adopt means of instruction for the different classes of the community."[1]

In answer to the interrogatory, " Do any measures occur to you, the adoption of which would, in your opinion, contribute progressively to the improvement of the moral character of the inhabitants of the division;" the judges of Moorshedabad replied; " The moral character of a nation can be improved by education only. All instruction is unattainable to the labouring poor: whose own necessities require the assistance of the children, as soon as their tender

[1] Fifth Report, p. 617.

limbs are capable of the smallest labour. With the middle class of tradesmen, artificers and shopkeepers, education ends at ten years of age, and never reaches further than reading, writing (a scarcely legible hand) on a plantain leaf, and the simplest rules of arithmetic. We are not prepared to suggest any measures, the adoption of which would, in our opinion, contribute progressively to the improvement of a people thus circumstanced."[1] In reply to the interrogatory which respected the effect produced by the operation of the English government on the moral character of the natives, the same judges observe; "The general moral character of the inhabitants of our division seems, in our opinion, much the same as we have always known the moral character of the natives in general. Ignorance; and its concomitant, gross superstition; an implicit faith in the efficacy of prayers, charms, and magic: selfishness, low cunning, litigiousness, avarice, revenge, disregard to truth, and indolence, are the principal features to be traced. It does not strike us, that the system established by the British government, for the administration of the laws, and the conduct of the internal administration of the country, can have any influence on the moral character of the inhabitants in general, either by way of improvement, or otherwise."[2]

On this, as on other occasions, Sir Henry Strachey evinces superior powers of reflection, and penetrates farthest below the surface. "To attempt," says he, "any material improvement or alteration in the

[1] Fifth Report, p. 524.

[2] Ibid. p. 520. See to the same purpose the answer of the Judge and Magistrates of Burdwan, p. 550.

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moral character of the natives, by the intervention of legislative measures, I look upon as vain. They no longer consider the laws as a part of their religion. I do not even see that, with us, law and morality have much connexion. It is the province of the magistrate to quell disorders and preserve peace; but as to good morals, I am not aware, that, either by precept or example, we are capable of producing any effect whatever. The vices and the crimes of the people proceed from their poverty and ignorance. And I do not conceive they are likely to grow much richer or wiser, while the present state of things exists.—This assertion, however, that the vices and crimes of the people proceed from their poverty and ignorance, I would wish to be understood with limitations. Where considerable numbers are collected and associate together,—especially if there happens to be much inequality of rank and fortune,—the morals of the people are worst: The same may be observed respecting such persons as have occasion to attend our cutcherries; they get into bad habits. It is not always, therefore, that the people are the worst where they are the poorest and most ignorant; nevertheless, the assertion is, in my opinion, generally speaking, true. It is certain that where labour is amply rewarded, where all can easily get employment, and where the poor are provided for, the people lead industrious and virtuous lives; and it will be observed that in remote parts, where debauchery and dissipation are little known, very few, except from necessity, resort to depredation on the public. Most, but not all, decoits begin their evil practices from necessity. A ryot, finding some difficulty to

subsist, either from his imprudence or ill fortune; a peon, or other servant, losing his place, and unable to procure another; a cooly, finding no employment: Such persons, of whom in this populous country there are always many thousands, often take to stealing; are corrupted by vicious companions; drink spirits; and are gradually led on, from impunity and habits of idleness, to become decoits, and depend on robbery alone for subsistence."[1] This is an important passage, which will afford evidence for some interesting conclusions in a subsequent page.

We have now seen the extent and dreadful nature of the evil; the inefficacy of the remedies which have been applied; and the sort of despair entertained by the functionaries of government that better can be found. That there is no impossibility, however, in establishing a good administration of justice, even in such a state of things as exists in India, we may infer without much danger of mistake, or even of contradiction.[2] If much of the

[1] Fifth Report, p. 539.

[2] That there was no impossibility, nor even much difficulty in applying remedies to the evil, even when at its greatest height, has been proved by incontestable authority, the records of the Government, which show that the remedies were at hand when there was industry and skill to employ them. Amongst the districts most notorious for decoity, prior to 1820, had been that of Burdwan. In that year Mr. W. B. Bayley was appointed magistrate. In the following year, the Circuit Judge reported that gang-robbery had become nearly extinct in the district, and a regular system had been introduced, which promised fair to secure the co-operation of all parts of the community in the detection and apprehension of offenders. Upon being desired to explain the means by which such a change had been so rapidly effected, Mr. Bayley reported, the principal of them to have been—the co-operation of the village watchmen, secured by rewarding them for activity, punishing them for neglect, protecting them against encroachments upon their Chakerani lands—small apportionments of rent-free land, by which their services were retained, and inducing the head-men of the villages to subscribe more liberally for the support of the Chowkeedars. The Munduls, who, were the principal fixed residents of

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difficulty has arisen from the dominion of English prejudices, and especially that deep-rooted prejudice, that English law is the standard of perfection to which every thing should be fitted, considerable progress towards improvement will be made, as soon as we have emancipated ourselves from those prejudices.

In the first place, as the law, according to what we have already seen, is in a state in which it is to a great degree incapable of performing the offices of law, and must remain almost wholly impotent, in a situation in which the deficiences of law are not supplied by manners, let the law be reformed, and put into that state in which alone it is adapted to answer the ends for which it is intended. Let the laws, whatever they may, for the security of existing rights, or the attainment of future advantages, be determined to be, receive what alone can bestow upon them a fixed, or real existence; let them all be expressed in a written form of words; words, as precise and accurate as it is possible to make them, and let them be published in a book. This is what is understood by a code; without such a code there can be no good administration of justice: in such a state of things as that in India, there can, without

each village, and who, as Mr. Bayley states, were vested by long usage with considerable local authority and immunities, and the Chowkeedars under them, were the chief classes upon whom he deemed it requisite to call for particular assistance, both in furnishing information and active aid in the improvement of the police." Judicial letter to Bengal 9th Nov. 1814. Papers relating to Police, from 1810 to 1819, printed for the House of Commons. The circumstances of Burdwan warrant the inference that it was not so much the character of the people, or the inadequacy of the law, as the inefficiency of the magistracy, which led to the prevalence of decoity at particular times in the lower provinces of Bengal. It was comparatively rare in the upper provinces, and was not as might be supposed from the remarks in the text, universal in the Company's territories.—W.

it, be no such administration of justice as consists with any tolerable degree of human happiness or national prosperity. In providing this most important instrument of justice, no further difficulty will be found, than the application of the due measure of virtue and intelligence; not to be looked for in the classes, whose interests the vices of the law promote. Sir William Jones, and others, recognised the demand for a code of Indian law; but unhappily thought of no better expedient than that of employing some of the natives themselves; as if one of the most difficult tasks to which the human mind can be applied, a work to which the highest measure of European intelligence is not more than equal, could be expected to be tolerably performed by the unenlightened and perverted intellects of a few Indian pundits.[1] With no sanction of reason could any thing better be expected than that which was in reality produced; a disorderly compilation of loose, vague, stupid, or unintelligible quotations and maxims, selected arbitrarily from books of law, books of devotion, and books of poetry; attended with a commentary, which only adds to the mass of absurdity and darkness: a farrago, by which nothing is defined, nothing established; and from which, in the distribution of justice, no assistance beyond the materials of a gross inference, can for any purpose be derived. To apply the authority of religion, or any other authority than that of the government, to the establishment of law, is now unnecessary; because the great and multiplied

[1] The Pundits were employed, not to compile a new code, but to digest what laws prevailed amongst the Hindus, and it cannot be denied that it was wise to ascertain what the people had, before supplying them with what they might not be found to require.—W.

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changes which the English have made in all the interior regulations of society, have already destroyed in the minds of the natives the association between the ideas of religion and the ideas of law.[1] But, at any time, for combining the authority of religion with that of law, nothing more was required, than what might still be advisable; namely, to associate the most celebrated of the pundits. For digesting the law into an accurate code, such men would be altogether unqualified; but they might lend their peculiar and local knowledge to him to whom the task is assigned; and they might easily and effectually annex the authority of religion to his definitions, by subjoining quotations from their sacred books, and declaring the words of the code to be the true interpretation of them. The law of the natives, and the minds of its interpreters, are equally pliant. The words, to which any appeal can be made as the words of the law, are so vague, and so variable, than they can be accommodated to any meaning. And such is the eagerness of the pundits to raise themselves in the esteem of their masters, that they show the greatest desire to extract from the loose language of their sacred books, whatever opinions they conceive to bear the greatest resemblance to theirs.[2] It would require but little management to obtain the cordial co-opera-

[1] This is an affirmation not warranted by the fact, as far as it regards a belief in the sanctity of those laws which are supposed to be based upon the Vedas or the Koran.—W.

[2] There is no proof of such a disposition, and its existence to the extent here intimated may be confidently denied. At the same time, it is, no doubt true, that the co-operation of Moulavis and Pundits is essential to the formation of an unexceptionable code, although in the attempt now in progress towards the codification of Indian law, native assistance has been dispensed with by the 'wisdom' of the British legislature.—W.

tion of the doctors, both Moslem and Hindu, in covering the whole field of law with accurate definitions and provisions; giving security to all existing rights, and the most beneficial order to those which were yet to accrue.

For the distribution of justice, there is required not only an accurate expression of what is to be observed and obeyed as law; but an adequate judicial establishment; or, an appointment of judges, and other ministers of justice, sufficient on every occasion, which calls for a decision, to declare what the law is, and to carry it into effect, with the smallest possible burden, in the way either of delay, vexation, or expense.

For this important purpose, it is evidently necessary, that the number of tribunals should bear a due proportion to the business which they are called upon to perform; and that, whenever the causes which offer themselves for decision exceed the number of those which it is possible for the existing tribunals to decide, addition should be made to the number of them, till they are sufficient for the prompt investigation of every case on which the judicial decision is required. From no government, surely, ought this language to be heard; that it does indeed see the necessity of a greater number of tribunals, in the inability of the existing number to investigate the suits of the people; but that it has something else to do with the money which it takes from the people, than to expend it in perfecting the administration of justice.

Nor is it enough, that the tribunals be sufficient in number to perform without delay the judicial business of the country; they ought to be sufficiently

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near each other, to enable every suitor to have recourse to them without that obstruction to justice which arises from the necessity of any considerable journey to perform. Of the value of this attribute of a judicial establishment no illustration is required.[1]

Another important condition to the excellence of a judicial establishment is, that in its mode of conducting the judicial business, all forms, all ceremonies, which create delay, trouble, and expense, or any one of them, without any corresponding advantage, should be carefully and completely retrenched; and nothing whatsoever left, but those plain and rational operations, which are recognised by all the world as useful, and alone useful, in the investigation of a matter of fact. It will remove the necessity of a longer explanation to observe, That the mode of procedure, which is called summary, and followed in the small debt courts in England, is an example of the mode of procedure which is divested of ceremonies, and retains only such plain and simple operations as form the ordinary steps of a rational inquiry: That the mode of procedure, on the other hand, which is called regular, and followed in the superior courts, is an example of the mode of procedure which is loaded with superstitious ceremonies and observances; and complicated by a multitude of operations, altogether different from the recognised steps of a rational inquiry. The consequence of this load of superstitious ob-

[1] What is here observed on the properties desirable in a judicial establishment, are only such general deductions from the science of legislation, as can find a proper place in a critical history. The analysis of the whole subject is seen in great perfection, in a work entitled, "Draught of a new Plan for the Organization of the judicial Establishment in France," by Jeremy Bentham, Esq.

servances, and this multiplicity of operations, is, not to lead with more certainty to the discovery of truth, but with less certainty: while the people are driven from the courts of justice by the terror of delay, trouble, and expense; and every species of injustice flourishes under the prospect of impunity and success. In the summary mode of procedure, in its perfect shape, is included every operation conducive to the elucidation of truth; every thing which is necessary for securing and bringing forward the evidence, and for presenting it to the mind of the judge, in its greatest possible plenitude, and most perfect possible shape. To add to these operations a multitude of others, which have no tendency whatsoever to improve the state in which the evidence is presented to the mind of the judge, can have no tendency to aid the discovery of truth. It must have a sure tendency to give it obstruction, in ways too numerous here to recount. Among the bitter fruits of a complicated mode of procedure; the loss of evidence, by the death, removal, and feeble memories of witnesses; and the successful efforts made by the guilty to intimidate or corrupt them; are enumerated, by the Indian judges, as evils, with which their experience had made them minutely acquainted. Were there nothing more than the complexity, which a multitude of nice and puzzling operations produces, it would be hurtful to the discovery of truth, by diverting and confusing the mind of the judge. But when those multiplied niceties and observances are superstitiously elevated as they uniformly are, into matters of chief and primary importance; when the mind of the judge is more

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vigilant to observe whether every one of the words and actions which enter into a multitude of frivolous ceremonies has been exactly observed, than to elicit every particle of evidence, and assign to it the proper station in his mind, it is impossible to estimate the injury which is done to the discovery of truth, and thence to the interests of justice, by a technical mode of procedure. Even by the servants of the Company, who have remarked with so much intelligence the shocking state of justice in India, I observe that "precipitate" is the epithet applied to the summary, or rational mode of procedure; "deliberate," that applied to the regular or ceremonious. It is a proof of the defects of their education, when such an illusion could pass upon minds of so much strength. That which is done with thought, is that which is done deliberately. That which is done without thought, is that which is done precipitately. It is of no consequence how long a thing remains undone, provided thought all the while is never applied to it. During the delay which takes place by the performance of the superstitious ceremonies of regular procedure, is it supposed by any body that the judge turns a thought to the merits of the cause? Deliberation is performed by the non-existence of thought, according to the theory of those who account delay and deliberation the same thing. The judge deliberates upon the question, at least to any valuable purpose, only during the time when he is receiving and digesting the evidence; for, as to the law, if it were all clearly expressed and written in a book, there never could be any considerable doubt. If any point was found to be really doubtful, the case should either be

suspended, or decided provisionally, till the determination of the legislature, removing the doubtfulness, should be applied for, and received. But with regard to evidence, and the light which it yields, the only article of real importance in the pursuit of truth, the judge is far more favourably situated, in the summary mode of procedure, than in the regular; because, in the summary mode, it is the light of evidence to the collecting and presenting of which, in its most complete and trust-worthy state, the force of every operation is directed. In the regular mode, so far is this from being the primary object, that a great proportion of the ceremonies have the unavoidable effect of compelling the evidence to be presented, in not the best possible, but a very inferior, state. With regard even to *time* for deliberation, the situation of the judge, under tardy, is worse than that of the judge under expeditious procedure. Of the greater proportion of causes the evidence may all be received and thoroughly understood in a very limited space of time. But causes do every now and then occur, in the case of which time is required, not only to receive, but complete the evidence; as when, by the hearing of one article of the evidence, other articles are indicated which time is required to produce. As often as occasions of this description occur, the rational mode of inquiry directs, that the judge should allow himself that portion of time, whatever it is, which is suited to the exigence of the case. Under the regular mode of procedure, the judge is tied down to fixed times and seasons; and must decide upon the evidence which he has

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been able to hear, whether it is complete and well digested, or the contrary. The nature of regular or superstitious procedure, therefore, is to produce the opposite evils of delay and precipitation. The nature of rational procedure is to shun both evils; to retrench every moment of the time and labour expended in the performance of useless ceremonies; to ensure in the fullest measure all the time which is necessary for the most perfect reception and understanding of the evidence.

It is probable that the words "summary," and "regular," impose upon persons who give to the subject only a precipitate glance. They are very ill chosen; that is to say, they very inaccurately describe the objects which they are employed to denote. Summary has very frequently the same import, as the term abridged. Now an abridged mode of procedure naturally means a mode of procedure in which some of the steps are left out; and if all the steps were useful, such a mode of procedure would be undoubtedly precipitate. But if no steps are left out, except those which are useless and pernicious; and all those which are of any use are much more carefully and much more perfectly performed, the summary mode of procedure is in reality the least precipitate; and also the most regular, if the exact adjustment of means to their ends, be the standard of regularity. Better names would be; the superstitious, instead of the regular, mode of procedure; and the rational, instead of the summary.

Thus far the way for the government of India is clear. For the performance of what is thus shown

to be necessary, all that is wanting is the will. If this were done, let us then consider how much would be gained. The mass of causes, that mass which, in India, smites, by its magnitude, the administration of justice with impotence, divides itself into two classes: First, that of the causes which derive themselves from the vices of the law: Secondly, that of those which derive themselves from the vices of the people. There are few other; there can be but few other. How great the proportion of those which are derived from the vices of the law, the complaints of the judges and other functionaries in India abundantly disclose. We learn that the great body of the people are excluded from the courts of law by means of the expense; that oppression reigns, because the people are unable to sue for redress; that universal encouragement is given to one man to withhold from another what is his due, by the certainty of delay, and the two chances, first of not being prosecuted, and secondly of baffling the plaintiff by the uncertainties of the law. We also learn that a wide field of impunity is ensured to every species of crime, the most atrocious not excepted: first, because the people, upon whom the expense and trouble, arising out of the dilatory and costly proceedings of the courts, impose a burden greater than they are able to bear, fly from the duty of appearing as witnesses or prosecutors against delinquents; secondly, because delay produces the frequent destruction of evidence; and, together with the uncertainties of an unwritten law, and the complicated ceremonies of a superstitious mode of procedure, affords the greatest chance of escape.

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From the whole then of these evils; to which is in a great measure to be ascribed the destructive anarchy which exists under the government of India; from the whole, I say, of that part of the mass of litigation which grows out of the vices of the law, and all the evils with which both are attended, the reform of the law, that is, an accurate code, an adequate judicial establishment, and a rational mode of procedure, would effect a complete deliverance.

No litigation would then remain, to prevent the effectual administration of justice, but that which would arise from the vices, intellectual or moral, of the people. The number of difficulties being greatly diminished, the power of coping with them would be greatly increased. It is also an important consideration, how much the vices of the people depend upon the vices of the laws, and how necessarily the vices of the people diminish, as the virtues of the laws are increased. Of this no man will doubt; that the most effectual step which can be taken by any government to diminish the vices of the people is, to take away from the laws every imperfection by which the vices, to impart to them every perfection by which the virtues, of the people may receive encouragement. On a former occasion we have heard Lord Cornwallis declare, that the *prosperity* or *decline* of any people may always be referred to the laws, as their source.[1] To the same copious fountain of all that is good, or all that is evil, with still greater certainty may their *vices* and *virtues* be traced.

The vices among the people of India which tend

[1] Vide supra, p. 473.

most to enfeeble the arm of justice, are two; their proneness to perjury; and their perfidy as agents of police: the one rendering it extremely difficult to convict offenders upon satisfactory evidence; the other shielding them from detection and apprehension. One would think it was not an effort beyond the reach of the human mind to find remedies of considerable efficacy for those diseases.

First in regard to perjury; the powers with which government, in this, as in other cases, is capable of acting upon the human mind, are three; the power of instruction; the power of reward; and the power of punishment.

On the subject of perjury it appears, that the people stand peculiarly in need of instruction. Under the native systems, legal or religious, particularly the Hindu, perjury was treated as a very trifling and venial offence. The most effectual measures should be adopted to make them clearly comprehend, that there is no crime, upon which the present government looks with more abhorrence; and that there is no quality which will be employed as a more certain mark to distinguish the objects of its favour and disfavour. Effectual modes of communicating this knowledge would not be difficult to find. It is observable, that wherever governments are in earnest about the communication of any article of knowledge to the people, they seldom remain destitute of means. They are seldom baffled, we see, in communicating a complete knowledge of what they wish to be done by the people, how complicated soever it may be, in making payment of taxes. It would be easy in India, for example, to

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print upon the receipt of taxes, or any other paper of general distribution, a short and clear description of the crime of perjury; with a notification, in the most impressive terms possible, of the deep abhorrence in which it is held by the government, and the severe punishment, both direct and indirect, to which it is exposed. To secure attention to this or any other article of information, many expedients might be found; rendering it, for example, necessary to answer certain questions, before any one could be admitted to perform certain acts. Where the manners of the people suffer any important condition to be placed before the permission to contract a marriage, it might be rendered conducive to many good effects.

In regard to the application of rewards and punishments, the channel in which the conceptions of the Reformer should run, is all that can here be easily shown. In the first place it is obvious, that every man whose veracity in a court of justice appears without suspicion, should be treated by the court with peculiar respect, and pointed out as an object of honour and esteem. He might be asked, if he had any favour to request, or any service to point out, which the court could render him, to testify its opinion of his virtue: he might be furnished with some honorary badge of distinction; and might even receive a ticket which should point him out as an object of favour to all the instruments of government, and to all those who wished to make the government their friend.

The punishments which have been applied to this offence appear, by the complaints of the Indian

judges, not to have been skilfully chosen, and to have been attended with little advantage. To prevent a crime of which the mischievous effects are so great, one would be willing to go to the expense of considerable severity, provided it were well adapted to the end. We are informed that severity of punishment has greatly diminished the prevalence of perjury before the Supreme Court; but the information is too general to enable us to ascertain the value of the fact. One circumstance there is which renders severity of punishment peculiarly inapplicable to this crime; and that is, the uncertainty of proof. In the greater number of cases, perjury is rather strongly suspected than clearly proved; and a judge, whose humanity is considerable, will not execute a terrible punishment, where he is not perfectly assured of guilt. The consequence is, that in the great majority of cases, the perjurer, for want of certain evidence, escapes, and the crime receives encouragement. On the other hand, if the punishment were mild, and the evil not incapable of reparation in case of mistake, a strong suspicion would suffice for the inference of guilt, and few delinquents would be suffered to escape. There is another consideration, of the highest possible importance; that perjury is not an offence which in every instance implies the same degree of guilt. In different instances, it implies all possible varieties of guilt, and very often, among the people of India, no guilt at all. Such, in many of them, is their imbecility of mind; so faint are the traces of their memory; so vivid the creations of their imaginations; so little are they accustomed to regard truth in their daily prac-

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tice; so much are they accustomed to mingle fiction with reality in all they think, and all they say; and so inaccurate is their language, that they cannot tell a true story, even when they are without any inducement to deceive.[1] Again, perjury is always committed as an instrument in the service of some other crime; and bears the character of guilt, in a low or a high degree, according to the nature of the crime for the sake of which it is perpetrated. It may be committed in exculpation of one's self, or of a near relation or friend; and for a slight or an atrocious offence; it may be committed for the accomplishment of a petty fraud; or it may be committed for the deliberate purpose of taking away the life of an innocent person. It is evident, that in these cases, there is the greatest possible difference in point of guilt; and the feelings of our nature revolt at the thought of inflicting the same punishment upon all. In the case of this, as of other accessary crimes, common good sense, not to speak of legislative wisdom, directs that it should be punished in some proportion to the principal crime;—the crime the benefit of which was the motive to the transgression.

[1] The following is a case so analogous as to afford some instruction. "He that goes into the Highlands with a mind naturally acquiescent, and a credulity eager for wonders, may come back with an opinion very different from mine; for the inhabitants, knowing the ignorance of all strangers in their language and antiquities, perhaps are not very scrupulous adherents to truth: yet, I do not say that they deliberately speak studied falsehood, or have a settled purpose to deceive. They have inquired and considered little, and do not always feel their own ignorance. They are not much accustomed to be interrogated by others; and seem never to have thought upon interrogating themselves; so that if they do not know what they tell to be true, they likewise do not distinctly perceive it to be false.—Mr. Boswell was very diligent in his inquiries; and the

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In tracing the truth, through the mazes of Indian evidence, there is required in the judge, not only much acuteness and sagacity, but great acquaintance with the habits and manners of the people; that he may be able to interpret the innumerable indications which are given by peculiar modes of expression and deportment. The grammatical construction of the sounds which pass through the lips of a witness, is often the least part of the instruction which a penetrating judge derives from him. Even in the native country of the Judge, experience gained from long practice in the modes of thinking, acting, and speaking, of the principal class of depredators, is found to give him important advantages in extracting the evidence of guilt. The extraordinary disadvantages, under which Englishmen, totally unacquainted with the manners of the Indians, lie, when they begin to seek their way through the labyrinth of Indian testimony, can be casily conceived. This ignorance is, accordingly, singled out, by some of the most intelligent of the Company's servants, as a source, and one of the principal sources, of the wretched administration of justice. The civil servants of the Company, who ascend to the office of Judge in routine of service, have, in general, no opportunity of obtaining any considerable acquaintance with the modes of thinking of the natives, and the evidence which their peculiarities import.

Another consideration, which ought to be impressed upon the minds of those who have it in their power to

result of his investigation was, that the answer to the second question was commonly such as nullified the answer to the first." Johnson's Journey to the Hebrides.

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amend the legislation of India, is; That well to perform the service of a judge, skilfully to extract, and wisely to estimate every article of a complicated mass of evidence, not only peculiar experience, and that acuteness and dexterity, which are acquired by habitual practice, are of the greatest importance, but also an enlightened acquaintance with those general principles regarding law and the administration of justice, which have their foundation in the general laws of human society, and which ought to run through and form the ground-work of the laws of all nations. In a situation where the body of law is complete, and well adapted to its ends, the absolute necessity is not so great for this species of knowledge in the judge, because he has rules for his guidance in every thing. He has few rules for his guidance in India, where every judge must, in a great measure, be the rule to himself. Here, it is evident, he has the greatest possible occasion for the guidance of those general principles, which an enlightened education alone can give. The youth who is destined to the great and delicate duties of a judge, in India, cannot be too carefully disciplined in that philosophy which gives the best insight into the principles of human nature; which most completely teaches the ends which the administration of justice has it in view to accomplish, and the means which are best adapted to the ends. This sort of education is of importance not only for imparting a knowledge, to the youths who become judges, of what ought to be done; but for imparting to them a love for the ends of justice; and thus creating a grand set of motives for ensuring the performance of what ought to be done. If those on

whom the legislation for India depends are in earnest for the establishment of a good administration of justice, a good education for judges is one of the first reforms they will undertake. This reform, too, will be without difficulty; because all that is wanting is a good choice of means. The cost would not be exorbitant. Here also is another of the occasions which so frequently occur, of remarking the bitter effects of that wretched policy, by which the settlement of Englishmen in our Indian dominions has been opposed. Had all parts of India been stocked, as under a system of freedom would have been the case, with Englishmen, settled in the various occupations of agriculture, manufactures, and trade, there would have been in the country a sufficient number of English gentlemen, thoroughly conversant with the manners and character of the natives: many of them born and bred among them; gentlemen, to whom it would have added dignity, to be vested with the powers of judicature; and who would have been well pleased to discharge its duties for a moderate reward.

By these, or expedients such as these, it will probably be allowed, that the difficulties, arising from the prevalence of perjury in India, might, to a great degree, be overcome. It is next to be inquired, what is capable of being done for the improvement of the police; that is, for the best organization of the powers necessary to detect and apprehend offenders, and to guard the people against the mischief they pursue.

Although, in a situation where the moral sanction operates with so little effect as in India, where the intellects of the people are too weak to distribute

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their love and esteem, their hatred and contempt, with operative energy, upon the acts, respectively, by which society is benefitted, or injured, the difficulty of ensuring a tolerable discharge of the duties of the men employed as agents of police is greatly enhanced; yet, in every situation, agents will violate their duties, if it is their interest to do so; and if in India it is made their interest not to violate them, we may count, with tolerable certainty, upon their being performed. We see the end, then, for which the means remain to be provided. On the subject of those means, a few general suggestions are all that can here find an appropriate place. Much both of local and of appropriate knowledge is required for details.

One observation there is, of which it is of importance that the weight should be felt. Were the business before the tribunals well performed, by removing the imperfections of law and judicature, the difficulties of police would be greatly reduced. As every offender will be pretty sure to suffer, who was actually detected and apprehended, the number of crimes would be so far diminished, and the agents of police more afraid to transgress. If the people were not punished for giving information, by a load of expense and trouble, they would afford means of great value for detecting and apprehending the authors of crime. Their apathy might be overcome by appropriate instruction, and by gentle applications of both punishment and reward. Protection, indeed, would be required against the vengeance of the decoits; and this should be one of the first objects of government. No exertion of its powers can be too great, to pursue

immediately, and incessantly, the gang by which any enormity has been committed in revenge for information. It should be seen and felt, by the whole community, that government will never rest, till it has seized the men by whom a crime, in so high a degree injurious to society, has been perpetrated, and till it has inflicted upon them the punishment which the repression of so dreadful an enormity requires. As one great end would be, to interest and rouse the people, might they not be called forth, in such a pursuit, in the mode of a *posse comitatus?* One expedient will naturally suggest itself to every body. The army could not be more usefully, nor more honourably employed, than in protecting the people who maintain them, from internal, as well as external, foes. All that would be necessary would be to distribute the men with their officers according to a skilful organization, combining their operations, in the smallest parties, with their operations in a body. The organization of people called *gens-d'armes* in France, would afford the instruction of an example. The concurrence of their will might be ensured by reward, as well in other shapes, as in that of honour, which would be so justly their due. Against the abuse of their powers, a well-ordered plan, and certainty of punishment, might afford a pretty effectual security. Objections will be drawn from the danger, to the morals and discipline of the soldiers; but the same securities which preserved them from the abuse of their powers, would also preserve them from the loss of their virtue. A more serious difficulty would be, to supply their place when called away by the demands of war.

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The best remedy to this, as to many other difficulties which baffle, and, without it, will long continue to baffle, the powers of the Indian government, would be found among the admirable effects of colonization. If Englishmen were mixed in considerable numbers among the natives, it would be easy to find a sufficient number of men, whose intellectual and moral qualities would fit them for guiding the native agents in the functions of police; and through whom it would be possible to prevent the abuse of the powers of those agents by ensuring its detection and punishment. The parent which begets the crimes of the darogahs, as of the decoits, is their knowledge of the inability of government to punish them.

When the business of detection and conviction is accomplished, punishment remains. On this subject a few observations are still to be made. As crimes have multiplied, increasing severity of punishment has been tried, and the multiplication of crimes has not been diminished. Beside the general experience and arguments which prove the inefficacy of severe punishments for the repression of crime, peculiar reasons apply to the case of India. Under the infirmities which diminish the evidentiary force of almost all Indian testimony, the cases are comparatively few in which the guilty can receive conviction on very satisfactory evidence. The feelings of no humane judge will permit him to inflict a cruel punishment, such as death, or any thing approaching to death, when the evidence is not complete. His only alternative is, to acquit; the consequence is, that in a great proportion of cases, the guilty escape: and crime receives that effectual encouragement, which

uncertainty of punishment always affords.[1] For such a combination of circumstances as that which

[1] Fifth Report, p. 588, 589, where we find the following excellent remarks, addressed, by E. Strachey, Esq., one of the Moorshedabad Judges, to the Court of Nizamut Adaulut, under date 19th August, 1808.

" I must again entreat the attention of the Court to some suggestions with respect to the police, and to the operation of the more immediate causes of decoity; and to a consideration of the reasons, why the sanction of the criminal law is become inefficient in the way of example, and can no longer deter from the commission of crimes, or affect any criminals except those who, in justice, are not deserving of severe punishment.

" I consider it as out of the question, to improve the moral and religious principle of the people, by direct positive institutions. We are too ignorant of the natives to attempt any thing so artificial without imminent risk. We do not understand the operation of such institutions on their minds, or their tendency, with respect to the frame of the society. As for the criminal law, I believe the impolicy and inefficacy, even the mischief of very severe punishments, is generally acknowledged, as well as the injustice of inflicting punishment, where other remedies might have been used with equal effect. With respect to increasing the severity of the criminal laws, we have before our eyes an admirable example. In 1803, and again in 1805, this principle was expected to prove a remedy for decoity. It has been tried, and it has utterly failed. As it is impossible to conceive a case more directly in point, or a more full, simple, convincing proof of the insufficiency of the means to the end; I trust no increase in the severity of the criminal law will ever be again resorted to.

" As punishments are more severe, stricter proof of the crime is required; and consequently a proportionally greater number of criminals escape conviction. Besides, the terror of the severe punishment makes the criminal more careful to guard against being taken; and as it has no tendency to increase the activity of the police, but the contrary, the number of offenders apprehended will, of course, be less than before. The decoits now guard against the danger of apprehension and conviction, by corruption and terror. They would give more bribes, and commit more murders, if they thought more precaution necessary; and the consequence would be, that the difficulties of apprehending and convicting decoits would increase, and people who had been robbed and tortured would still be compelled to perjure themselves that they might not be murdered.

" And with respect to the administration of the laws, are not the judges now intrusted with as much power as is proper? And if the law was made more severe, would it not be necessary to extend their power still further! And are we all fit persons to be intrusted with discretionary power to inflict punishments which are by many considered to be worse than death?

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India presents to the hand of the legislator, the rational course of expedients would undoubtedly be, to apply that lenity of punishment with which alone it is found that certainty can be combined; to prescribe no punishment which, upon strong presumption of guilt, the mind of a man would revolt provisionally to apply; to make use of no punishment the evil of which cannot be repaired, if the innocence of the prisoner should afterwards appear; and then to prescribe unsparing conviction as often as the balance of probability inclines to the side of guilt.

That admirable instrument for the application of all sorts of reparable punishments, and not only of reparable punishments, but what is infinitely better, of reformative punishments, punishments under the operation of which the restoration to society of hardly any offender would be an object of despair: the Panopticon penitentiary house, invented and described by Mr. Bentham, an organ of justice so well adapted to the exigencies of every community, would, with extraordinary advantage, apply itself to the extraordinary circumstances of Bengal. For individuals, under every species of guilt, and every legal degree of suspicion, an appropriate place would be found in one of these important hospitals for the mind; and society would no longer be exposed to danger from any individual to whom probable evidence of a mischievous character attached.[1]

"Persons who are intrusted with such powers ought to be appointed from no other consideration whatever, but that of the fitness of the man for the place. But I would ask, whether all our appointments have ever been so filled? And whether it is probable, from the nature of our service, that they ever will be? We may all be judges, learned and unlearned."

[1] The want of this important instrument of judicature is felt, though not

Under the existing system the penal contrivances appear to be no better adapted to their end than those which we have already contemplated. In the report from Moorshedabad, in 1803, "The number of crimes," say the judges, "committed annually in the division under our jurisdiction, appears to have increased since the year 1793. The causes to which we ascribe the increase, are; the want of a preventive police; and the inefficacy of imprisonment, as a punishment, for either reformation, or example. We do not perceive any effects from the regulation, which declares persons convicted of the crime of perjury, liable to be marked on the forehead. In the course of our judicial duties, we still meet with the same barefaced disregard of truth, which always characterized the natives of India. The punishment of transportation, introduced by the British government, falls chiefly on decoits. And yet the crime of decoity has not decreased, in the division under our authority. To judge, therefore, of its operation by this result, it would follow,—that the punishment is of no effect; and the terror of it must daily diminish.[1]

A government which would render honesty and

distinctly understood, by some of the Company's judges. The answer to the interrogatories, in 1802, from the magistrates of the twenty-four pergunnahs, says; "A number of the convicts at this station are employed in repairing some of the public roads in the vicinity of Calcutta, &c. The number of guards requisite to superintend and watch the convicts, thus employed, prevents our keeping so many of them to work, as we could wish, and as the preservation of their health seems to require. The construction of a house of correction, in the vicinity of the jail, where all the convicts who are capable of work might be kept to constant labour, would remedy the evil, and appears to us to be a preferable mode." Fifth Report, ut supra, p. 553.

[1] Ibid. p. 521, 524.

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justice prevalent among its subjects must itself be honest and just. Sir Henry Strachey, who looked upon the evils of India with eyes more enlightened than ordinary, complains, that "no provision is made for the return of those convicts to their country, who are transported beyond seas for a limited time, although it is well known, that hardly any native possesses the means of procuring a passage for himself."[1] What is this, but, under the false pretence of a sentence of a limited number of years, to pronounce, in all cases of transportation, a sentence for life? Is it possible that a class of delinquents who know themselves exposed to become the victims of this injustice should not be hardened to greater ferocity, and on account of the wrongs which they are liable to receive, regard with less remorse the wrongs which they commit? Is it possible, that the most impressive of all examples, the example of the government, should fail of its effect in imbuing the minds of the people with a reverence or contempt of justice?

There is another remedy for the evils of that delinquency which, to so dreadful a degree, prevails in India; a remedy which some of the agents of the Company's government have wisely and virtuously brought to view, and which from every consideration both of humanity and policy deserves the most profound regard. We have already learned from Sir Henry Strachey, that the vices of the people arise from their poverty and ignorance; and especially their poverty; because he expressly affirms, that

[1] Fifth Report, ut supra, p. 558.

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"where labour is amply rewarded, where all can easily get employment, and where the poor are provided for, the people lead industrious and virtuous lives."[1] He frequently recurs to this important topic. On another occasion he says, "In a year of plenty, like the present, when few are in want of food or employment, decoity will certainly less prevail, than in a year of scarcity."[2] The connexion between poverty and crime is one of the laws of society on which, to a peculiar degree, the attention of the legislator ought to be fixed. None of the links in the moral constitution of our nature is more indissoluble; on none do a greater number of important consequences depend. That a perpetual struggle with the miseries of poverty and want operates with baneful effect upon the moral character, no man who has observed the laws of human nature will dispute. When a man has nothing to lose, and every thing to gain, by disregarding the laws of society, by what power is he to be restrained? As soon as death by hunger stares him in the face; with regard to him, the law is deprived of its power; for what is the evil with which it meets him, to the evil from which he runs? Another thing ought to be well remembered, That extreme misery, and above all things the miseries of poverty, diminish the value of life; and that the man to whom life is

[1] Vide supra, p. 339, 340.

[2] Fifth Report, p. 559. In another place he says, "Great population, and poverty, produce misery and crimes; particularly in a country where there is no public, and consequently, no certain and regular, provision for the poor: Where there are, I may almost say, more poor than in any country: And where the *ability*, and disposition, of private individuals to support them, are continually diminishing." Ibid. p. 533.

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a burden is but little affected with the prospect of losing it. Whoever has had an opportunity of witnessing, with any habits and powers of observation, the deaths of the poor and the rich, must have been struck with one extraordinary distinction: In most cases the rich part from life with great reluctance; the poor, except just in the morning of hope, with a kind of satisfaction, a sort of pleasurable anticipation of the rest of the grave; an expression among those of them at least who have entered the vale of years, than which there is none more common, none to which the feelings are more truly attuned. It is also a matter of general experience, that the man whose thoughts are perpetually harassed with the torment of immediate, or the dread of future want, loses the powers of benevolent sympathy with his fellow-creatures; loses the virtuous feelings of a desire for their pleasures and an aversion to their pains; rather hates their pleasures, as rendering the sense of his own misery more pungent; desires their pains, as rendering the sense of that misery the less. This is the account which all the wisest interpreters of nature have rendered of that cruel and ferocious character, which uniformly accompanies the hardships of the savage life. The man who sets little value on his own life is not likely to be much affected at the thought of taking away the life of another. The man who rather desires the pains than the pleasures of others, is not likely to deny himself any gratification; on account of the sufferings to others of which his pleasure may be the cause. Another result of immediate suffering is, that it produces an extraordinary greediness of

immediate gratification; a violent propensity to any sensual indulgence which is within the reach. This is a result, which deserves the greatest attention; and which is a recognised, experienced principle of human nature. The animal nature of man, when it is under suffering, impels him, with a force which is almost irresistible, to afford himself some compensation in the way of animal pleasure; any pleasure whatsoever, rather than none; that which he can most easily command; that which most completely takes from him awhile the grating recollection of his own wretchedness. It is a rule, accordingly, that the poorest people are the most intemperate; the least capable of denying themselves any pleasure, however hurtful, which they are able to command; hence their passion for intoxicating liquors; and hence, because still more wretched, the still more furious passion of the savage for those pernicious drugs. Nor is this all. The great restraining power, the happy influence which keeps the greatest part of mankind within the bounds of virtue, is the love of esteem, and the dread of contempt; the passionate desire, which is natural to man, for the favourable regards, the dread and horror with which he contemplates the unfavourable regards of his fellow-creatures. The favourable regards, however, of mankind can only be obtained, by pursuing a line of conduct which is useful to mankind; their unfavourable regards can be avoided, only by abstaining from every line of conduct which is hurtful to them. But it deserves to be considered with very great attention, that it is only in a state of some ease and comfort, that this salutary feeling exists in any consider-

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able strength. And the wretchedness of poverty is attended with this evil consequence, that it excludes those favourable regards of mankind, the desire of which constitutes the strongest motive to virtue. It plunges a man into that state of contempt into which misconduct would have placed him: and out of which no virtues which he can practise are sufficient to raise him. The favourable or unfavourable regards of mankind, therefore, operate with little effect to restrain him from any course of action to which he is impelled. What, then, upon the whole of this induction, is the general result? That, in a state of extreme poverty, the motives which usually restrain from transgression; respect for the laws, dread of the laws, desire of the esteem and affection, dread of the contempt and abhorrence of mankind, sympathy with the pains and pleasures of our fellow-creatures, lose their influence upon the human mind, while many of the appetites which prompt to wickedness acquire additional strength.

If, therefore, the government of India would lessen the tendency to crime, which is manifested among its subjects to so extraordinary a degree, it must lessen the poverty which prevails among them to so extraordinary a degree.

If the state of crime be, as it undoubtedly is, a sort of criterion of the state of property, the people of India have been falling, since the year 1793, into deeper poverty and wretchedness. Knowing, then, what we thus know, of the progress of delinquency in India, what are we led to think of the unintermitting concert of praises, sung from year to year,

upon the Indian government, and upon the increasing happiness of the Indian people, of which that government is the cause?

The mode of increasing the riches of the body of the people is a discovery no less easy than sure. Take little from them in the way of taxes; prevent them from injuring one another; and make no absurd laws, to restrain them in the harmless disposal of their property and labour. Light taxes and good laws; nothing more is wanting for national and individual prosperity all over the globe. In India, where there is yet uncultivated a prodigious quantity of good land, the inference will suggest a doubt to no instructed mind. In more fully peopled countries, the effect has never yet been seen of good laws in keeping the pace of population back to the pace of food. The laws of human nature, clearly read, no less ensure the one result than they do the other.

The government of Bengal lost an opportunity, than which a finer was never enjoyed, of accelerating the acquisition of riches, and hence the growth of virtue, and decline of vice, in the great body of the people; when it declared the Zemindars, and not the ryots, the proprietors of the soil; when it sought by coercive and artificial means to create that vast inequality of fortunes, of which the corruption of the great body of the people is the never-failing result.

It is actually singled out, by the most intelligent of the Company's servants, among the causes of the prevalence of crime in India, as one, the operation of which is very particularly and distinctly felt. "Where considerable numbers," says Sir Henry Strachey, "are collected and associate together, espe-

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cially if there happens to be much inequality of rank and fortune, the morals of the people are worst, though, compared to the inhabitants of other parts of the same country, they may be said to be neither indigent nor uninformed."[1] That nothing should be done to prevent inequality of fortune, the good of society, because the encouragement of production, requires. Laws for the purpose of creating and preserving a forced, unnatural inequality, are the result of a desire of making slaves of the many to make lords of the few. The original laws of India follow in this important respect the dictates of nature. By permitting a man to dispose of his property as he pleases during his life, and leave it to any person, or any number of persons, after his death; and by dividing it equally among his children, or his relatives of equal proximity, if no disposition of it is made by himself, they favour that freedom of disposal, that perfection of ownership, that circulation and distribution of property, by which the benefits derived from property are in greatest perfection attained.

The temper and practice of the courts of justice are enumerated among the causes of the prevalence of crime; the courts of justice are represented as so immoral, that they infuse a deeper stain of depravity into the Indian character; and corrupt, beyond their usual pitch of wickedness, the natives who approach them. An imputation, more expressive of the interior depravity of courts of justice, cannot easily be conceived. That the tribunals ought to be the guardians of morals, not the corrupters, is a general

[1] Fifth Report, p. 539.

maxim; the guardians, both by the doctrines which they teach, and the example they afford. That any tribunal, however, which guides unhappy suitors through a maze of wretched ceremonies and forms should be other than a den of chicane, that is, of fraud; and the chief of all seminaries of the fraudulent arts, is not very possible. That such are the courts of justice in India, and above all the Supreme Court, the court of English law, is indubitably proved. Sir Henry Strachey, after stating, that where inequality of rank and fortune prevails, there "the morals of the people are worst," adds, "the same may be observed, respecting such persons as have occasion to attend our cutcherries."[1] In another place, he says, "I beg leave here to offer it as my opinion, that little morality is learnt in any court of justice. In Calcutta, I have reason to believe the morals of the people are worse by means of the system established by us. Nor do I attribute this solely to the size, population, and indiscriminate society of the capital, but in part to the Supreme Court. I scarcely ever knew a native connected with the Supreme Court, whose morals and manners were not contaminated by that connexion."[2] Enumerating the causes, which, under the English government, have operated to change the character of the natives, "the cicumstance," he says, "of the jurisdiction of the Supreme Court, and the intercourse between the Natives and the lowest officers of that court, may be considered as one of the causes of that nature. But, I ask, whether the morals of the people are in any respect improved by these

[1] Fifth Report, p. 539. [2] Ibid. p. 539.

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causes? Whether they have not learned all the low arts of chicanery, imposture, and litigiousness, peculiar to an English court of justice;—without a particle of plain-dealing, firmness, independence of spirit, or useful knowledge of any kind?"[1]

It has been alleged above, that most of the Indian judges point to education, as the only power from the operation of which a favourable change can be expected in the moral character of the people; on this subject, however, if Sir Henry Strachey is excepted, their views are superficial. The most efficient part of education is that which is derived from the tone and temper of the society; and the tone and temper of the society depend altogether upon the laws and the government. Again; ignorance is the natural concomitant of poverty; a people wretchedly poor, are always wretchedly ignorant. But poverty is the effect of bad laws, and bad government; and is never a characteristic of any people who are governed well. It is necessary, therefore, before education can operate to any great result, that the poverty of the people should be redressed; that their laws and government should operate beneficently. The education of the poor is not extended beyond the use of written, in addition to that of spoken language. Now this, considered nakedly by itself, and without regard to the exercise made of it, cannot be regarded as of any great value. In Europe, where books are so happily diffused, the faculty of written language, imparted to any people, must of necessity prove to them a source of new and

[1] Fifth Report, p. 527.

useful ideas. But in India, of what sort are the books to which alone it can introduce them? The tales about their gods, from which they can derive nothing but corruption. In fact, the natives of India, and other parts of Asia, are very generally taught the use of written language;[1] and have been so from time immemorial; yet continue the ignorant and vicious people, of whose depravity we have so many proofs. No; if the government would make the faculty of reading useful to the people of India, it must take measures for giving them useful books. There is one effectual measure for this purpose; and there never was, and never will be another; and that is the freedom of the press. Among the other admirable effects of a free press, one is, that it makes it the *interest* of government that the people should receive the highest possible instruction; compels the government to exert itself to the utmost in giving them instruction; to the end, that the people may not be in danger of being misled by misrepresentation; and that the government may be assured of their attachment, whenever it deserves it. The Indian government, however, if a conclusion from its past may be drawn to its future conduct, will not choose a free press for the first of its ameliorating agents. Considering the mental state of the people of India, it is possible that among them, at the present moment, the unrestrained use of the press might be attended with inconveniences of a serious nature, and such as would surpass the evils it would remove. There is no people, however, among whom it may not be introduced by degrees. The people of India,

[1] See Malcolm's History of Persia, and Elphinstone's Caubul.

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it is certain, ought to receive, as one of the indispensable instruments of improvement, as much of it as they can bear; and this would soon prepare them, if properly encouraged, for the receipt of more, and hence, by rapid steps, for the enjoyment of it, in all its fulness, and all its efficiency. The government of India is told, indeed, by one of its own servants, from whose recorded instructions it might learn much, that something far beyond the power of mere schooling, a power which in India cannot be strong, is required to work any beneficial change in the character of the people committed to its charge. "The vices and the crimes of the people," says Sir Henry Strachey, "proceed from their poverty and ignorance; and I do not conceive they are likely to grow much richer or wiser, *while the present state of things exists*."[1] By the present state of things he undoubtedly means, the present state of the laws, and the government; on which every thing else depends. What he declares, therefore, is, that under the present state of the laws and the government, the improvement, either of the circumstances, or of the morals of the people is utterly hopeless; and that a fundamental change must take place in these, the primary sources of good and evil, before any change can take place in the streams they send forth. Next to the direct operation of ameliorated laws upon the intellectual and moral character of the natives, would be that diffusion of Englishmen in the society, by means of colonization, from which we have already seen that so many important consequences would flow.[2]

[1] Fifth Report, p. 71.

[2] Beside the official documents, which I have quoted as I went on, there

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After the voyage of Lord Cornwallis to Madras, in 1793, he did not return to Bengal; but sailed for

is information of infinite importance, on the state of delinquency in India, on its causes, and on its remedies, in the work of a young Indian judge, lost to the world too soon, the work formerly quoted, on the "Political State of India," by Alexander F. Tytler, Esq.—M. There is, no doubt, much that is commendable in these projected reformations; but, as is the case in all closet legislation, difficulties are disregarded—the relative importance of objects is miscalculated, and the efficacy of favourite remedies ludicrously overrated. That the laws should be comprehensive and precise, that tribunals should be in proportion to the wants of the people, and that justice should be administered without avoidable delay, are truisms which no person will dispute. But to enact a code of laws prematurely for a society, which, like that of British India, is in a course of constant and fundamental change, must leave very much to be done, very much to be undone. To multiply inefficient tribunals would be to multiply the chances of wrong, and justice administered without form or deliberation will often turn out to be injustice. The prevalence of perjury is exaggerated as has been before shown, and it may be doubted if sentences explanatory of its criminality on the back of a tax-gatherer's receipt will be more efficacious in suppressing it, than the stanzas to the same effect which are to be found even in Menu, or that a ticket granted as a certificate of veracious testimony by a court of justice would be very highly prized. That the judge should be qualified to interpret evidence by the innumerable indications which are given by peculiar modes of expression and deportment is, no doubt, highly desirable, and that he should be carefully disciplined in a knowledge of human nature and of the principles and practice of jurisprudence, is undoubtedly of equal importance, but a complete course of forensic education in England would delay the season of exhibiting its benefits in India until the faculty of adaptation to climate and circumstances had passed away, and time and inclination would be wanting to acquire that intimate acquaintance with the people which it is admitted is equally essential to the formation of a perfect judge. That persons thus doubly qualified will be abundant and cheap in India, now that some half dozen indigo-planters, and sugar-growers rear their produce on their own lands, would scarcely be anticipated by our author, were he able to observe the effects of this universal panacea for all the defects of Anglo-Indian government. The conversion of the whole army into a military police, is a project not very likely to meet the concurrence of military men, and those who know how the troops in India are disposed of, will laugh outright at the notion of distributing the men with their officers all over the country, according to a skilful organization, which should combine their operations in the smallest parties with their operations in a body. It may be also doubted, if the government will be in a hurry to organize the whole of the population as gens-d'armes. And here, again, an importance is

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England in the month of August. To complete the view of his administration, the financial situation in which he left the Company is all that remains to be described.

In the year ending April 1793, the whole of the receipts of the Company in India amounted to 8,225,628*l.*; and the whole of the expenses amounted to, 7,007,050*l.*; the difference is 1,218,578*l.*; the profit or, gain, which accrued to the Company upon the transactions of that year. In the receipts were

attached to the admirable effects of 'colonization,' which it is safe prophecy to foretell, will never be realized, for colonization never will—never can, take place. With regard to the proposed mode of punishing crime, we much doubt the expedience of a Panopticon Penitentiary in Bengal, although it be the invention of Mr. Bentham. The conclusion of the inefficacy of the existing means of preventing or punishing guilt drawn from the assertion of the judges of Moorshedabad, that decoits had not decreased in the district under their jurisdiction in 1803, shows how dangerous it is to draw conclusions in a hurry, as the crime of decoity has, since 1803, infinitely decreased in the division of Moorshedabad. The remarks which are made upon the relation of poverty and crime are unquestionably perfectly just and sound, but it may be doubted, if it is quite so easy as it is assumed to be, to enrich the body of the people. If the discovery be as palpable as is represented, it is marvellous that the old established governments of Europe have not found it out, and it is scarcely fair to the newly and anomalously-constituted government of India to expect that it should set the example. At the same time the novelty and peculiarity of our condition are favourable to progressive improvement, and in nothing is the text more to be reprehended than in the impression it tends to produce, that that which was the 'present state of things' in 1808, was never to receive amelioration. The view which is taken of it is an extreme exaggeration of its defects, but it is the spirit of the British Indian Government to be perpetually reforming. The reforms are not always judicious—and they are often mischievous by being precipitate—by being premature—time is not allowed to consolidate one project, before, on account of some unessential imperfections which would correct themselves, it is swept away by an equally short-lived successor. Still, however, the tendency is praiseworthy and beneficial—and many changes have been made, and many more are in progress, which are much more likely than colonization to ameliorate the condition of the native population. It is only necessary not to be impatient—nor to force on exotic reforms out of season, if we would wish them to take root and live.—W.

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included the subsidies from Indian Princes, and collections from the ceded and conquered countries, to the amount of 1,911,492*l.*; and in the expenses were included the interest of debts in India, and the money supplied to Bencoolen and the other distant settlements, amounting to 702,443*l.* The debts in India were 7,971,665*l.* The debts in England, exclusive of the capital stock, were 10,983,518*l.* To the capital stock, another million had been added in 1789, which, subscribed at 174 per cent., yielded 1,740,000*l.* The capital stock, on which was now paid a dividend of ten and a half per cent., amounted to 5,000,000.[1] The financial results of this administration, when compared with the financial results of that of Mr. Hastings,[2] exhibit a decrease of the net surplus, but to compensate for this, the extinction of a small portion of debt. The financial state of the Company, as it appeared on the face of the accounts, is thus a little better in one respect, but worse in another; and the point of deterioration more material, doubtless, than that of improvement. As the government of India was, however, now the government of the ministry, it was the interest of the ministry to praise it. In this particular, they were, accordingly, by no means wanting to themselves. The influence of the ministry in parliament has been almost always sufficient to make the praises bestowed by the ministry be accepted in parliament as principles of belief; and the influence of ministry and par-

[1] See the accounts of the E. I. C. for 1793, presented to parliament in 1794. See also the Third and Fourth Reports of the Select Committee on India affairs, in 1810, with the accounts in the Appendixes.

[2] Vide supra, ii. 675.

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liament was combined, to give them an ascendency over the belief of the nation at large. Mr. Dundas, no ordinary master in the oblique arts of ruling the minds of men, represented these financial results, as an object not only of rejoicing and triumph, but even of astonishment. He endeavoured to persuade, and succeeded in persuading, the parliament and the nation, that India had fairly begun to be, what India would continue to be, a vast source of wealth to the nation, affording a surplus revenue, sufficient to enrich the East India Company, and contribute largely toward the maintenance of the British government itself. Such were the strains which year after year were sung in the ears of the nation; and dictated the legislative proceedings. In fact, however, the favourable symptoms, inferior as they were to those exhibited in 1786, lasted for only a year or two. In 1797, a permanent deficit began, and the rapid accumulation of debt exceeded all former example. The joy, indeed, which was expressed upon the financial prospects of India, wherever it was real and not pretended, was founded from the beginning upon ignorance. Large sums had been obtained from new-made conquests, and the charge to be incurred for their government was not yet ascertained. As soon as that charge had time to swell to its natural, that is, its utmost limits, the disbursements of the Indian government outran its receipts.

END OF VOL. V.

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